STATUTORY INSTRUMENTS

1977 No. 992

SOCIAL SECURITY

The Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit (Amendment) (No. 2) Scheme 1977

Made - - -	*9th June* 1977
Laid before Parliament	*10th June* 1977
Coming into Operation	*1st July* 1977

The Secretary of State for Social Services after consultation with the Council on Tribunals insofar as required by section 10 of the Tribunals and Inquiries Act 1971 **(a)**, and with the consent of the Treasury, in exercise of the powers conferred by sections 4(2), (3) and (4), 5 and 8(1) of the Industrial Injuries and Diseases (Old Cases) Act 1975 **(b)** (as amended by section 11(1) of the Social Security (Miscellaneous Provisions) Act 1977 **(c)** and section 10(2) of, and paragraph 9 of Part II of Schedule 1 to, the said Social Security (Miscellaneous Provisions) Act and all other powers enabling him in that behalf, hereby makes the following scheme which is made only in consequence of the enactment of the provisions of section 10(2) and 11(3) of, and Part II of Schedule 1 to, that Act and to make amendments to a scheme mentioned in section 10(2) relating to the payment of allowances during imprisonment and to applications to undergo medical examination and to add to the diseases to which the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966 **(d)** applies and which, accordingly, by virtue of section 11(6) of that Act is exempt from the requirement of section 4(8) of the Industrial Injuries and Diseases (Old Cases) Act 1975 (scheme not to be made unless a draft of that scheme has been approved by resolution of each House of Parliament):—

Citation, interpretation and commencement

1. This scheme, which may be cited as the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit (Amendment) (No. 2) Scheme 1977, shall be read as one with the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966 (hereinafter called "the principal scheme") as amended **(e)** and shall come into operation on 1st July 1977.

Amendment of article 1 of the principal scheme

2.—(1) Article 1 of the principal scheme (citation, commencement and interpretation) shall be amended in accordance with the following provisions of this article.

(2) In article 1(2)—

(*a*) for the definition of "the Minister" there shall be substituted:—

"The Secretary of State" means "the Secretary of State for Social Services";

(a) 1971 c. 62 **(b)** 1975 c. 16. **(c)** 1977 c. 5.

(d) S.I. 1966/164 (1966 I, p 303).

(e) The relevant amending schemes are S.I. 1971/1222, 1975/1139 (1971 II, p 3576; 1975 II, p 3999).

(*b*) for the definition of "the Administrative Board" there shall be substituted the following definition:—

"the Administrative Board has the meaning assigned to it immediately before the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit (Amendment) (No. 2) Scheme 1977 **(a)** came into operation";

(*c*) after the definition of "allowance" there shall be added the following definition:—

"the appropriate determining authority" means the insurance officer or, as the case may be, a local tribunal or National Insurance Commissioner within the meaning of section 97 of the Social Security Act".

(3) After paragraph (6) there shall be added the following paragraph:—

"(7) For the purposes of this scheme, 2 persons shall not be treated as having ceased to reside together if they would not have been so treated under regulation 2 of the Social Security Benefit (Persons Residing Together) Regulations 1977 **(b)** (circumstances in which persons are not to be treated as having ceased to reside together)".

Amendment of article 9 of the principal scheme

3.—(1) Article 9 of the principal scheme (death benefit) shall be amended in accordance with the following provisions of this article.

(2) In paragraph (1) for "paragraph (4)" there shall be substituted "paragraphs (4) and (5)".

(3) In paragraph (2) the words "the earnings of" and the proviso shall be omitted.

(4) In paragraph (3) the words "the earnings of" and "if the following conditions or any of them are satisfied" and sub-paragraphs (*b*) and (*c*) shall be omitted.

(5) For paragraph (4) there shall be substituted the following paragraph:—

"(4) The capital sum payable by way of death benefit in respect of a deceased person shall, subject to the condition that where, under the following provisions of this paragraph, such sum is payable to more than one person the total payment shall not exceed £300, be calculated and payment made in accordance with those provisions and with the order of priority herein set out:—

(*a*) where the deceased is survived by—

(i) his widow who was residing with him at his death, or

(ii) her widower who was wholly dependent upon her and who was residing with her at her death

the sum of £300 shall be payable to that widow, or as the case may be, to that widower;

(a) S.I. 1977/ 992 (1977 II, p. 2797).

(b) S.I. 1977/ 956 (1977 II, p. 2678).

(*b*) where the deceased is survived by no such widow or widower as aforesaid but is survived by—

(i) either his widow who was, at his death receiving or entitled to receive or would but for the relevant disease have been receiving from him periodic payments for her maintenance of not less than the amount prescribed by regulations for the purposes of section 67(1)(*b*) of the Social Security Act or, where the deceased was a woman, by her widower who was wholly dependent upon her; and

(ii) a child who was at his or her death residing with him or her and in respect of whom he or she was entitled to child benefit under the Child Benefit Act 1975 **(a)**

the sum of £300 shall be divided equally between the widow or, as the case may be, widower and that child or, if there is more than one child, between the widow or widower and those children;

(*c*) where the deceased is survived by such a widow or widower as is mentioned in article 9(4)(b)(i) or (ii) but by no such child as is described in article 9(4)(b)(iii) the sum of £300 shall be payable to that widow or, as the case may be, to that widower;

(*d*) where the deceased is survived by no such widow or widower as is mentioned in the foregoing sub-paragraphs but is survived by a child who was at his death, residing with him and in respect of whom he was entitled to child benefit under the Child Benefit Act 1975, the sum of £300 shall be payable to that child or, if more than one, divided equally between those children;

(*e*) where the deceased is survived by no such person as aforesaid but is survived by a member of his family who was wholly maintained by him at the date of his death, the sum of £300 shall be payable to that member or, if more than one, divided equally between those members;

(*f*) where the deceased is survived by no such person as aforesaid but is survived by any member of his family who was partly maintained by him at the date of his death, such sum or sums not exceeding in total £300 shall be payable to that member or, if more than one, those members, as may be reasonable and proportionate to the loss sustained by such member or members.

(6) For the purposes of this article, a dependant shall be disregarded—

(*a*) where the dependant has died (whether he had made a claim for death benefit or not) before an award of such benefit in respect of the deceased has been made; or

(*b*) where the dependant was not ordinarily resident in the United Kingdom at the date of the death of the deceased.

(a) 1975 c. 61.

Additions to the principal scheme

4. After article 10 of the principal scheme there shall be inserted the following articles:—

"*Administration of the scheme*

10A. This scheme shall be administered by the Secretary of State and, subject to articles 20 and 21, the provisions of the Social Security (Claims and Payments) Regulations 1975 **(a)** and the Social Security (Industrial Injuries) (Benefit) Regulations 1975 **(b)** which are specified in Schedule 3 to this scheme shall, with the necessary modifications apply for the purposes of this scheme.

Determination of questions arising under the scheme

10B. Subject to the provisions of article 16 of this scheme, any question relating to any allowance or benefit under this scheme shall be determined as if it had arisen under the Social Security Act and except where this scheme otherwise provides, the provisions of the Social Security Act and of the Social Security (Determination of Claims and Questions) Regulations **(c)** which are specified in Schedule 3 to this scheme shall, with the necessary modifications, apply for the purposes of this scheme."

Amendment of article 14 *of the principal scheme*

5. For article 14 of the principal scheme (finality of decisions of the Administrative Board) there shall be substituted the following article:—

"14. Except as provided by article 36 any decision given by the Administrative Board on a claim or question under provisions of this scheme in force immediately before the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit (Amendment) (No. 2) Scheme 1977 came into operation or under any scheme made under the Industrial Diseases (Benefit) Acts in force immediately before 1 March 1966 shall be final for the purposes of this scheme".

Amendment of article 20 *of the principal scheme*

6. For article 20 of the principal scheme (obligation to undergo medical examination) there shall be substituted the following article:—

"20.—(1) Subject to the following provisions of this article, every claimant for, and every beneficiary in receipt of, an allowance shall comply with every notice given to him by the Secretary of State which requires him to submit himself to a medical examination by a medical authority (as defined in paragraph (4) of this article).

(2) Every notice given to a claimant or beneficiary requiring him to submit himself to medical examination shall be given in writing and shall specify the time and place of examination but shall not require the claimant or beneficiary to submit himself to examination—

(*a*) in the case of examination by a medical board, before the expiration of the period of 6 days beginning with the date of the notice or such shorter period as may be reasonable in the circumstances;

(*b*) in any other case, on a date earlier than the third day after the date on which the notice was sent.

(a) S.I. 1975/560 (1975 I, p. 2014).
(b) S.I. 1975/559 (1975 I, p. 1979).
(c) S.I. 1975/558 (1975 I, p. 1956).

(3) Every claimant and every beneficiary who, in accordance with the foregoing provisions of this article, is required to submit himself to a medical examination shall attend at every such place and at every such time as may be required.

(4) In this article, the expression "medical authority" means a medical board or a medical practitioner nominated by the Secretary of State."

Amendment of Article 28 of the principal scheme

7. Article 28 of the principal scheme (allowances during imprisonment) shall be amended in accordance with the following provisions of this article:—

(*a*) in paragraph (1) after the word "allowance" where that word first appears there shall be inserted the words "including increases for dependants"; and

(*b*) in paragraph 1(*b*) for the words "amount to £100" there shall be substituted the words "equal the total amount payable by way of such allowances for a period of one year".

(*c*) paragraph (2) shall be omitted.

Amendment of article 36 of the principal scheme

8. For article 36 of the principal scheme (transitional provisions as to review) there shall be substituted the following article:—

"*Transitional provision relating to review of decision of the Administrative Board*

36.—(1) The insurance officer may at any time and from time to time review any decision given by the Administrative Board under provisions of this scheme in force before 1st July 1977 **(a)** if—

(*a*) the decision was erroneous in view of new facts which have been brought to his notice since the date on which the decision was given or by reason of some mistake being made with respect to the facts or the law; or

(*b*) there has been any relevant change of circumstances since the decision was given.

(2) The claimant or the Secretary of State may raise a question with a view to the review of any decision of the Administrative Board by application in writing to the insurance officer stating the grounds of the application.

(3) Where it appears to the Secretary of State that a question has arisen whether the award of an allowance to which this article relates ought to be revised in accordance with the provisions of paragraph (1) of this article, he may direct that the payment of the allowance shall be suspended in whole or in part until the question has been determined, but if he does so he shall forthwith refer the question to the insurance officer for determination in accordance with the provisions of this article.

(4) Any question arising in connection with the review to which this article applies shall be determined and, if appropriate, the decision revised and an allowance awarded or paid in accordance with the provisions in force when the original decision was given.

(a) See S.I. 1977/992

(5) Where on a review to which this article applies a decision of the Administrative Board is revised so as to make an allowance payable or to increase the rate of an allowance, the decision given on review shall, subject to the next succeeding paragraph of this article, have effect from the date of the application for the review or from such earlier date as appears to the appropriate determining authority to be reasonable in the circumstances.

(6) Benefit shall not, by virtue of the last preceding paragraph, become payable from a date earlier than the earliest date from which it could have been payable had it been awarded in the decision being reviewed.

(7) A decision given on review under this article, and a refusal to review a decision thereunder shall be subject to appeal to the local tribunal and the Commissioner on the grounds set out in sub-paragraphs (*a*) and (*b*) of paragraph (1) of this article.

(8) Where a decision is revised on review under this article, the decision given on review shall subject to the provisions of the next succeeding paragraph, require repayment to the National Insurance Fund of any sums paid by way of an allowance in pursuance of the original decision to the extent to which they would not have been payable if the decision on the review had been given in the first instance.

(9) Notwithstanding the provision of the last preceding paragraph of this article, repayment of sums by way of an allowance in pursuance of the original decision shall not be required under this article in any case where it is shown to the satisfaction of the determining authorities that in the obtaining and receipt of the benefit the beneficiary, and any person acting for him, has throughout used due care and diligence to avoid overpayment.

(10) For the purposes of this article a decision given under any scheme made under the Industrial Diseases (Benefit) Acts shall be treated as if it had been a decision given under this scheme as it was immediately before the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit (Amendment) (No. 2) Scheme 1977 came into operation.

(11) On the review of a decision given by the Administrative Board under any scheme made under the Industrial Diseases (Benefit) Acts in force before 1 March 1966, a decision given by an Insurance Officer or any question referred to him for determination under any such scheme may be reviewed by such an insurance officer in accordance with the provisions of that scheme".

Amendments of the principal scheme consequential upon changes in administration and adjudication

9. The principal scheme shall be amended in accordance with the following provisions of this article:—

(*a*) in article 1(3)(*c*) for "£104 a year" there shall be substituted "in a year such amount as is for the time being prescribed in pursuance of section 58(3) of the Social Security Act";

(*b*) in article 2(2)(iv) the words "or determined as provided in Article 15 as the case may require" shall be omitted.

(*c*) in article 3 there shall be the following amendments—

(i) in article 3(*d*) after "by virtue of any scheme made or certified thereunder" there shall be added "(other than compensation in

respect of total or partial incapacity for work under the Refractories Industries (Silicosis) Scheme 1931 **(a)** or the Sandstone Industry (Silicosis) Scheme 1931 **(b)** as amended **(c)**)";

(ii) in the proviso the words "the Administrative Board are satisfied that" shall be omitted.

(*d*) in article 4(1) for "the Administrative Board determine" there shall be substituted "it is determined by the appropriate determining authority";

(*e*) articles 11, 12, 13, 15, 17, 18, 23, 27, 29, 30 and 37 shall be revoked;

(*f*) in article 16 there shall be the following amendments—

(i) for "the Administrative Board" wherever those words occur there shall be substituted "the insurance officer";

(ii) for "their" "them" and "they" wherever those words occur there shall be respectively substituted "his" "him" or "he";

(iii) the proviso to article 16(1) shall be omitted.

(*g*) in article 19 for "the Administrative Board or the Minister, as the case may be" and for "the Administrative Board or the Minister" there shall be substituted "the Secretary of State";

(*h*) in article 21 there shall be the following amendments—

(i) in article 21(1) for "the Administrative Board may determine that the allowance or increase shall be payable from such earlier date as they consider reasonable" there shall be substituted "the allowance shall be payable from such earlier date as is reasonable";

(ii) in the proviso for "the Administrative Board" there shall be substituted "the appropriate determining authority";

(*i*) for article 22 there shall be substituted the following article:—

"Where an allowance is payable under this scheme by means of orders for the payment through the Post Office of weekly sums on account of the allowance, the said weekly sums shall be payable on Thursdays";

(*j*) in article 24 the words "and the Minister shall thereupon notify the Administrative Board of any such change of circumstances" shall be omitted;

(*k*) in article 26 for "the Administrative Board" wherever those words appear there shall be substituted "the appropriate determining authority";

(*l*) in article 31 for "under article 30" there shall be substituted "under this scheme";

(*m*) in article 33 for "shall be determined by the Administrative Board, or where appropriate by an insurance officer or by the Commissioner" there shall be substituted "shall be determined by the appropriate determining authority";

(*n*) in article 34 for "in the opinion of the Minister or, as the case may be, the Administrative Board" there shall be substituted "in the opinion of the Secretary of State".

(a) S.R. & O. 1931/345 (Rev. XXIV, p. 608: 1931 p. 714).
(b) S.R. & O. 1931/346 (Rev. XXIV, p. 620: 1931 p. 728).
(c) The amending instruments are S.R & O. 1939/635, (Rev. XXIV, p. 620: 1939 II, p. 3552), 1946/595 (Rev. XXIV, p. 634: 1946 I, p. 2236).

Amendment of Schedule 1 *to the principal scheme*

10. In the first column of Schedule 1 to the principal scheme for paragraph 4 there shall be substituted the following paragraph:—

"4. Primary neoplasm of the epithelial lining of—

(*a*) the urinary bladder (papilloma of the bladder),

(*b*) the renal pelvis,

(*c*) the ureter, or

(*d*) the urethra."

Substitution of Schedule 3 *to the principal scheme*

11. For Schedule 3 to the principal scheme (provisions of the Industrial Injuries Act and of regulations made thereunder applicable (with the necessary modifications) to claims for and payment of allowances) there shall be substituted the Schedule set out in the Schedule to this scheme.

Repeal of paragraphs 7 *and* 8 *of Schedule* 1 *to the Social Security* (*Miscellaneous Provisions*) *Act* 1977

12. Paragraphs 7 and 8 of Schedule 1 to the Social Security (Miscellaneous Provisions) Act 1977 **(a)** insofar as they relate to the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966 are hereby repealed.

David Ennals,
Secretary of State for
Social Services.

2nd June 1977.

We consent

T. E. Graham,
David Stoddart,
Two of the Lords Commissioners
of Her Majesty's Treasury.

9th June 1977

(a) 1977 c. 5.

SCHEDULE

Article 11

Containing new Schedule 3 to be substituted in principal scheme

SCHEDULE 3

Articles 10A and 10B

Provisions of the Social Security Act and regulations made thereunder applicable (with the necessary modifications) to this scheme.

Provisions of the Social Security Act and of regulations made thereunder	Subject matter
Social Security Act 1975 **(a)**	
Section 95(1)(*b*)	Question for determination by Secretary of State
Section 99	Decision of insurance officer
Section 100	Appeal to local tribunal
Section 101	Appeal from local tribunal to Commissioner
Section 102	Questions first arising on appeal
Section 104	Review of decisions
The Social Security (Claims and Payments) Regulations 1975 **(b)**	
Regulation 4	Claims to be made to the Secretary of State in writing
Regulation 5	Supply of claim forms
Regulation 6	Claims not on appropriate forms
Regulation 8	Amendment of claim forms
Regulation 15	Time and manner of payment of benefit.
Regulation 20	Extinguishment of right to sums payable by way of benefit which are not obtained within the prescribed time
Regulation 26	Persons unable to act
Regulation 27	Payments on death

(a) 1975 c. 14.

(b) S.I. 1975/560 (1975 I, p. 2014).

Provisions of the Social Security Act 1975 and of regulations made thereunder	Subject matter
The Social Security (Determination of Claims and Questions) Regulations 1975 **(a)** ...	
Regulation 3	Procedure at hearings and in connection with determinations; and right to representation
Regulation 4	Non-disclosure of evidence by local tribunal and Commissioner
Regulation 5	Reference by the Secretary of State or insurance officer or a competent tribunal to medical practitioner for report
Regulation 9	Appeals from insurance officer's decisions
Regulation 10	Time and place of hearing before local tribunals
Regulation 11	Hearing before local tribunals
Regulation 12	Decisions of local tribunals
Regulation 13	Procedure before Commissioner on appeal from a local tribunal
Regulation 32(1) and (2)(*a*)	Review of decisions involving payment or increase of benefit
Regulation 34	Adjustment of benefit on review or appeal
The Social Security (Industrial Injuries) (Benefit) Regulations 1975 **(b)**	
Regulation 38	Suspension of payment of benefit
Regulation 39	Suspension of payment of benefit pending appeals or references

(a) S.I. 1975/558 (1975 I, p. 1956).

(b) S.I. 1975/559 (1975 I, p. 1979).

EXPLANATORY NOTE

(This Note is not part of the Scheme.)

This Scheme amends the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966 in accordance with the amendments made to the Industrial Injuries and Diseases (Old Cases) Act 1975 by sections 10(2) and 11 of, and Part II of Schedule 1 to, the Social Security (Miscellaneous Provisions) Act 1977.

Article 3 amends the conditions relating to death benefit. Article 4 and the Schedule to this scheme provide for the principal scheme to be administered by the Secretary of State, for questions (other than certain medical questions) to be determined as if they had arisen under the Social Security Act 1975 and for certain regulations made under that Act to apply for the purpose of the principal scheme.

Articles 6 and 7 amend the provisions of the principal scheme relating to applications to undergo medical examination and to payment of allowances during imprisonment. Article 10 extends the application of the principal scheme to primary neoplasm of the epithelial lining of the urethra in the case of persons employed in occupations involving the production, use or handling of certain chemicals. The other articles are of a consequential, minor or transitional nature.

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