STATUTORY INSTRUMENTS

# 1976 No. 1628

## SOCIAL SECURITY

## The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1976

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| *Made - - -* | *1st October* 1976 |
| *Laid before Parliament* | *8th October* 1976 |
| *Coming into Operation* | *31st January* 1977 |

The Secretary of State for Social Services, in exercise of powers conferred upon him by section 113(1) and (2) of the Social Security Act 1975(**a**) and of all other powers enabling him in that behalf, after reference to the Industrial Injuries Advisory Council, and after consultation with the Council on Tribunals, hereby makes the following regulations:—

*Citation, interpretation and commencement*

**1.** These regulations which may be cited as the Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1976, shall be read as one with the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1975(**b**), as amended(**c**) (hereinafter referred to as "the principal regulations"), and shall come into operation on 31st January 1977.

*Amendment of regulation* 30 *of the principal regulations*

**2.** In regulation 30(2) of the principal regulations (reference to medical appeal tribunal at instance of the Secretary of State) there shall be deleted the words "Subject as aforesaid".

*Amendment of regulation* 49 *of the principal regulations*

**3.** For regulation 49(4) of the principal regulations (finality of decision of a pneumoconiosis medical board on any diagnosis question in respect of pneumoconiosis, byssinosis or diffuse mesothelioma) there shall be substituted the following paragraphs:—

"(4) Where in respect of a claim for disablement benefit by reason of pneumoconiosis or byssinosis a pneumoconiosis medical board or, as the case may be, a medical appeal tribunal gives a decision under the foregoing provisions of these regulations that the claimant is or, as the case may be, was suffering from one or other of those diseases,—

(*a*) that board or, as the case may be, that tribunal may, on the evidence before it at the time of its decision, determine also the date from which the claimant has or, as the case may be, had suffered from that disease; and,

(**a**) 1975 c.14. (**b**) S.I. 1975/1537 (1975 III, p. 5340).
(**c**) The relevant amending instrument is S.I. 1975/2241 (1975 III, p. 8420).

(*b*) notwithstanding the provisions of section 117(1) of the Act (finality of decisions), in making that determination, the board or, as the case may be, the tribunal shall not be bound by any previous decision of an insurance officer or a pneumoconiosis medical board that the claimant was not suffering from that disease; and

(*c*) any such previous decision, in so far as inconsistent with the said determination, shall cease to have effect.

(4A) In relation to any decision of a pneumoconiosis medical board on a diagnosis question in respect of pneumoconiosis or byssinosis raised by a claimant for disablement benefit by reason of either disease, regulation 30(1) (appeal to medical appeal tribunal) shall only apply subject to the following conditions, namely that:—

(*a*) before the date of that decision on at least 3 separate occasions—

(i) the claimant has claimed the said benefit on account of pneumoconiosis or, as the case may be, byssinosis; and

(ii) such a board has given a decision (other than a decision given only on review under regulation 32) that no such disease was diagnosed; and accordingly

(iii) the claim was or, as the case may be, remained rejected; and

(*b*) by that date—

(i) not less than 2 years have elapsed since the date of the first of the decisions referred to in subparagraph (*a*)(ii) above; and

(ii) in a case where an appeal has previously been made by the claimant to a medical appeal tribunal in respect of a decision on a diagnosis question relating to pneumoconiosis or, as the case may be, byssinosis, not less than 2 years have elapsed since the rejection of the last such appeal.".

*Transitional provisions*

**4.**—(1) In the circumstances prescribed in the next succeeding paragraph, regulation 30(1) of the principal regulations (appeal to medical appeal tribunal) shall on and after the date on which these regulations come into operation apply to a decision of a pneumoconiosis medical board on a diagnosis question in respect of pneumoconiosis, byssinosis or diffuse mesothelioma, notwithstanding—

(*a*) in the case of such decision in respect of pneumoconiosis or byssinosis, that the conditions prescribed in regulation 49(4A) of the principal regulations, have not all been satisfied after these regulations come into operation;

(*b*) in the case of such decision in respect of diffuse mesothelioma, that the decision was given before the date on which these regulations come into operation.

(2) The circumstances referred to in the last preceding paragraph are that—

(*a*) in the case of such decision in respect of pneumoconiosis or byssinosis—

(i) the decision against which the appeal is brought was given on or after that date; and

(ii) before that decision was given, the conditions described in the said regulation 49(4A) were in fact satisfied either before, or in part before and in part after, these regulations come into operation;

(*b*) in the case of such decision in respect of diffuse mesothelioma, the decision was given before 27th November 1974(**a**).

(3) Regulation 30(2) of the principal regulations (reference to medical appeal tribunal) shall not apply to any decision of a pneumoconiosis medical board on a diagnosis question in respect of any of the 3 afore-mentioned diseases where the decision was given before the date on which these regulations come into operation.

Signed by authority of the Secretary of State for Social Services.

*Stanley Orme*,
Minister for Social Security
Department of Health and Social Security.

1st October 1976.

## EXPLANATORY NOTE

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

These Regulations amend th eSocial Security (Industrial Injuries) (Prescribed Diseases) Regulations 1975 by removing the prohibition of a right of appeal and reference to a medical appeal tribunal in respect of a decision of a pneumoconiosis medical board on any diagnosis question in respect of pneumoconiosis, byssinosis or diffuse mesothelioma. They also empower a pneumoconiosis medical board or, as the case may be, a medical appeal tribunal, which decides that a claimant for disablement benefit by reason of pneumoconiosis or byssinosis is suffering from one or other of those diseases, to decide also on the evidence before it at the time of its decision the date of origin of that disease notwithstanding any previous decision of an insurance officer or a pneumoconiosis medical board in that matter. Further, in relation to a decision by a pneumoconiosis medical board on a diagnosis question in respect of pneumoconiosis or byssinosis, they make provision for the right of appeal to be subject to prescribed conditions (Regulation 3).

(**a**) See regulation 5(4) of the National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1974, S.I. 1974/1415 (1974 II, p. 5524).

The Regulations also make transitional provisions in respect of the prescribed conditions for appeal to a medical appeal tribunal from a diagnosis decision of a pneumoconiosis medical board in respect of pneumoconiosis or byssinosis, provided that the decision itself is given on or after the date on which these Regulations come into operation. The Regulations also make transitional provisions for appeals to be brought after the date on which these regulations come into operation against a diagnosis decision given by a pneumoconiosis medical board in respect of diffuse mesothelioma, where the decision was given before 27th November 1974. So far as references are concerned (otherwise than on appeal), the Regulations provide for no reference to be made to a medical appeal tribunal of any decision on a diagnosis question in respect of any of the 3 diseases where the decision was given before the date on which these Regulations come into operation (Regulation 4).

The remaining provisions of these Regulations are either formal (Regulation 1) or consequential (Regulation 2).

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