STATUTORY INSTRUMENTS

1962 No. 283

WORKMEN'S COMPENSATION

The Workmen's Compensation (Supplementation) Amendment Scheme, 1962

Laid before Parliament in draft
Made - - - - *8th February,* 1962
Coming into Operation *28th February,* 1962

Whereas a draft of the following Scheme was laid before Parliament and approved by resolution of each House of Parliament:

Now, therefore, the Minister of Pensions and National Insurance, with the consent of the Treasury, in exercise of powers conferred by the Workmen's Compensation (Supplementation) Act, 1951(a), as amended by section 3 (5) of, and the Schedule to, the National Insurance Act, 1957(b) and as amended and extended by section 1 of the Family Allowances and National Insurance Act, 1961(c), and of all other powers enabling him in that behalf, hereby makes the said Scheme:—

Citation, commencement and interpretation

1. This Scheme, which may be cited as the Workmen's Compensation (Supplementation) Amendment Scheme, 1962, shall be read as one with the Workmen's Compensation (Supplementation) Scheme, 1951(d) (hereinafter referred to as "the principal Scheme"), and shall come into operation on the 28th February, 1962.

Amendment of Part I of the principal Scheme

2.—(1) For paragraph (2) of Article 1 of the principal Scheme (which paragraph contains the interpretation provisions relating to the Scheme) there shall be substituted the following paragraph:—

"(2) In this Scheme unless the context otherwise requires—

"the Act" means the Workmen's Compensation (Supplementation) Act, 1951;

"the Industrial Injuries Act" means the National Insurance (Industrial Injuries) Act, 1946(e);

"the National Insurance Act" means the National Insurance Act, 1946(f);

"the 1956 Act" means the Workmen's Compensation and Benefit (Supplementation) Act, 1956(g);

"the 1961 Act" means the Family Allowances and National Insurance Act, 1961;

(a) 14 & 15 Geo. 6. c. 22. (b) 5 & 6 Eliz. 2. c. 26. (c) 10 & 11 Eliz. 2. c. 6.
(d) S.I. 1951/1150 (1951 II, p. 1401). (e) 9 & 10 Geo. 6. c. 62.
(f) 9 & 10 Geo. 6. c. 67. (g) 4 & 5 Eliz. 2. c. 51.

" the Benefit Regulations " means the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948(a) ;

" the Minister " means the Minister of Pensions and National Insurance ;

" allowance " means an allowance payable by virtue of Part II or Part IIA of this Scheme ;

" beneficiary " means a person entitled to an allowance ;

" the Board " means the Board established under Article 8 of this Scheme ;

" claimant " means a person claiming an allowance and includes, in relation to the review of an award or a decision, a beneficiary under an award or affected by the decision ;

" the relevant injury or disease ", in relation to any person, means—

(*a*) for the purposes of Part II of this Scheme, the injury or disease in respect of which he is or has since the commencement of the Act(b) been entitled to weekly payments by way of workmen's compensation, as defined for the purpose of that Part, in consequence of an accident happening before the 1st January, 1924 ;

(*b*) for the purposes of Part IIA of this Scheme, the injury or disease in respect of which he is or has since the passing of the 1961 Act(c) been entitled to weekly payments by way of workmen's compensation, as defined for the purposes of that Part, in consequence of an accident happening after the beginning of the year 1924 ;

" workmen's compensation " means—

(*a*) in relation to a case to which Part II of this Scheme applies, compensation under the Workmen's Compensation Act, 1906(d), the Workmen's Compensation (Silicosis) Act, 1918(e), or the Workmen's Compensation Acts, 1897 and 1900(f), or under any contracting out scheme duly certified under any of those Acts ;

(*b*) in relation to a case to which Part IIA of this Scheme applies, compensation under the Workmen's Compensation Acts, 1925 to 1945, or under any contracting out scheme duly certified thereunder."

(2) For paragraph (4) of Article 1 of the principal Scheme (which paragraph specifies the circumstances in which a person shall be deemed entitled to weekly payments by way of workmen's compensation) there shall be substituted the following paragraph :—

" (4)—(1) For the purposes of Part II of this Scheme—

(*a*) a person shall be deemed entitled to weekly payments by way of workmen's compensation, as defined for the purpose of that Part, in consequence of an accident happening before the 1st January, 1924, at any time when he would be so entitled if the the amount he is earning or able to earn in some suitable employment or business, or the amount of any payment, allowance or benefit received by him otherwise than by way of such workmen's compensation, or both, were sufficiently reduced ; and

(a) S.I. 1948/1372 (Rev. XVI, p. 441: 1948 I, p. 2918). (b) 21.3.51.
(c) 20.12.61. (d) 6 Edw. 7. c. 58.
(e) 8 & 9 Geo. 5. c. 14. (f) 60 & 61 Vict. c. 37 and 63 & 64 Vict. c. 22.

(*b*) a payment under the Workmen's Compensation (War Addition) Acts, 1917 and 1919(a), shall be treated as a weekly payment by way of workmen's compensation.

(2) For the purposes of Part IIA of this Scheme—

(*a*) a person shall be deemed entitled to weekly payments by way of workmen's compensation, as defined for the purpose of that Part, in consequence of an accident happening after the beginning of the year 1924, at any time when he would be so entitled if the amount of any payment, allowance or benefit received by him otherwise than by way of such workmen's compensation were sufficiently reduced; and

(*b*) a payment under the Workmen's Compensation (Supplementary Allowances) Act, 1940(b), as amended by the Workmen's Compensation (Temporary Increases) Act, 1943(c), shall be treated as a weekly payment by way of such workmen's compensation."

Amendment of Article 2 of the principal Scheme

3. In Article 2 of the principal Scheme (which Article relates to the allowances payable under the Scheme in cases of pre-1924 accidents) there shall be made the following amendments:—

(*a*) after paragraph (3) there shall be inserted the following paragraph:—

"(3A) For the purpose of calculating the weekly rate of the allowance of a beneficiary for any period for which he is not entitled to an allowance under the 1956 Act, the sum of forty shillings specified in sub-paragraphs (*a*) and (*b*) of paragraph (3) above shall be increased to the sum of fifty shillings:

Provided that any increase in the weekly rate by virtue of this paragraph shall not exceed the sum of two shillings and sixpence for any period for which the beneficiary is entitled to an allowance in respect of partial disablement under any scheme made under the Industrial Diseases (Benefit) Acts, 1951 and 1954(d)."

(*b*) in paragraph (4) (which paragraph provides for an increase in the allowance payable in respect of a period of total incapacity for work where there is a wife) for the words "or wholly or mainly maintaining his wife or would under the provisions of the Industrial Injuries Act be treated as doing so" there shall be substituted the words "or is contributing at a weekly rate of not less than sixteen shillings to the maintenance of his wife".

Amendment to Article 7 of the principal Scheme

4. In Article 7 of the principal Scheme (which Article provides for entitlement to allowances in respect of two or more different injuries or diseases) for the words "forty shillings" there shall be substituted the words "fifty shillings".

(a) 7 & 8 Geo. 5. c. 42 and 9 & 10 Geo. 5. c. 83. (b) 3 & 4 Geo. 6. c. 47.
(c) 6 & 7 Geo. 6. c. 49. (d) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 4 and 2 & 3 Eliz. 2. c. 16.

Addition to the principal Scheme

5. After Article 7 of Part II of the principal Scheme there shall be added the following Part:—

"PART IIA

Allowances payable under the Scheme in cases of post-1923 accidents

7A.—(1) Subject to the following provisions of this Scheme, a person who is or has since the passing of the 1961 Act been entitled to weekly payments by way of workmen's compensation in consequence of an accident happening after the beginning of the year 1924, shall be entitled to an allowance under this Part at a weekly rate not exceeding ten shillings payable out of the Industrial Injuries Fund during any period of total or partial incapacity for work resulting from the relevant injury or disease during which he is not entitled to an allowance under the 1956 Act, so long as he is ordinarily resident in the United Kingdom:

Provided that a person shall not be entitled to an allowance for any period during which he is entitled to any payment under any legislation of Northern Ireland corresponding to the 1961 Act.

(2) The weekly rate of an allowance—

(*a*) in the case of an allowance payable to a person in respect of a period of total incapacity for work resulting from the relevant injury or disease shall not exceed such sum as would together with the weekly payment by way of workmen's compensation disregarding any supplementary allowance for a child amount to two-thirds of his average weekly earnings before the happening of the accident (ascertained in accordance with Article 7C), nor where the amount of the workmen's compensation includes the amount of any supplementary allowance for a child, exceed such sum as would together with that compensation, including the supplementary allowance, amount to seven-eighths of such average weekly earnings;

(*b*) in the case of an allowance payable to a person in respect of a period of partial incapacity for work resulting from the relevant injury or disease shall not exceed the difference between two-thirds of the amount representing his weekly loss of earnings (ascertained in accordance with Article 7C) due to the relevant injury or disease and the amount of his workmen's compensation disregarding any supplementary allowance for a child, nor where the amount of the workmen's compensation includes the amount of any supplementary allowance for a child, exceed the difference between seven-eighths of the amount representing that loss of earnings and the amount of the workmen's compensation inclusive of the supplementary allowance.

(3) For the purpose of this Article "supplementary allowance" means an allowance under the Workmen's Compensation (Supplementary Allowances) Act, 1940, as amended by the Workmen's Compensation (Temporary Increases) Act, 1943.

Amount of Workmen's Compensation

7B.—(1) Any reference in Article 7A to the amount of a person's workmen's compensation shall (subject to the provisions of paragraph (2) of this Article) be taken as referring to the amount (if any) of the weekly payments to which for the time being he is, or would but for the determination of his right be, entitled in respect of the relevant injury or disease:

Provided that—

(*a*) where in fixing the amount of those weekly payments under the provisions relating thereto regard was had to any payment, allowance or benefit which he might receive during the period of his incapacity from the person liable for the compensation and the amount is shown to have been reduced in consequence, the amount of those weekly payments shall for the purposes of this Article be taken to be the reduced amount so fixed with the addition of the amount of the reduction; and

(*b*) where the amount of those weekly payments has not been fixed under the provisions relating thereto, it shall be fixed for the purposes of this Article without regard to any such payment, allowance or benefit as aforesaid.

(2) Where a person is or has since the passing of the 1961 Act been entitled to payments under the Workmen's Compensation (Supplementary Allowances) Act, 1940, as amended by the Workmen's Compensation (Temporary Increases) Act, 1943, but has before that date ceased to be entitled to any other weekly payments by way of workmen's compensation in respect of the relevant injury or disease, the amount of his workmen's compensation shall for the purposes of Article 7A be calculated as if he had not ceased to be entitled to such other payments.

Computation of loss of earnings

7C.—(1) For the purposes of paragraph (2) of Article 7A the amount representing a person's loss of earnings due to the relevant injury or disease is the difference between the following amounts, that is to say—

(*a*) the amount of his average weekly earnings before the happening of the accident; and

(*b*) the average weekly amount which he is earning or is able to earn in some suitable employment or business.

(2) The amounts referred to in sub-paragraphs (*a*) and (*b*) of the last foregoing paragraph shall be calculated in like manner as for the purpose of ascertaining the weekly payments to which for the time being he is, or would but for the determination of his right be, entitled by way of workmen's compensation in respect of the relevant injury or disease, and any decision as to those amounts made for that purpose may be adopted for the purpose of this paragraph unless there is reason to reconsider it.

Allowances payable to beneficiaries who have ceased to be ordinarily resident in the United Kingdom

7D. Where the beneficiary ceases to be ordinarily resident in the United Kingdom he shall not by reason of that fact cease to be entitled to an allowance under this Part—

(*a*) where an application for a reference to a medical referee has been made and the medical referee certifies in accordance with section 16 of the Workmen's Compensation Act, 1925(a), that the

(a) 15 & 16 Geo. 5. c. 84.

incapacity resulting from the relevant injury or disease is likely to be of a permanent nature ; or

(*b*) where no such application has been made, if the Board is satisfied that the said incapacity is likely to be of a permanent nature.

Allowances in respect of two or more different injuries or diseases

7E.—(1) Where a claimant or beneficiary is, or has since the passing of the 1961 Act been, entitled for the same period to weekly payments by way of workmen's compensation in respect of two or more different injuries or diseases, he shall, subject to the provisions of this Part, be entitled to an allowance under this Part in respect of each such injury or disease :

Provided that he shall not in respect of the same period be entitled to receive two or more allowances under this Part at an aggregate weekly rate exceeding ten shillings.

(2) Where a claimant or beneficiary is entitled for any period to an allowance in respect of partial disablement under any scheme made under the Industrial Diseases (Benefit) Acts, 1951 and 1954, he shall not be entitled to receive by way of allowance or allowances under this Part for that period a total weekly sum exceeding two shillings and sixpence:

Provided that where he is also entitled to an increase of benefit for that period under Article 2 (3A) of this Scheme the weekly rate shall be further reduced by the amount of that increase of benefit.

(3) Where a claimant or beneficiary is entitled for any period to an allowance under Part II of this Scheme, he shall not be entitled to receive for that period an allowance under this Part at a weekly rate exceeding the sum which, together with any increase of the allowance payable by virtue of Article 2 (3A) of this Scheme, amounts to ten shillings."

Amendment of Article 11 *of the principal Scheme*

6. In Article 11 of the principal Scheme (which Article provides for the reference of questions to insurance officers) for the words " or wholly or mainly maintaining his wife (or would under the provisions of the Industrial Injuries Act be treated as doing so) ; " there shall be substituted the words " or contributing at a weekly rate of not less than sixteen shillings to the maintenance of his wife ; ".

Amendment of Article 24 *of the principal Scheme*

7. For the proviso to paragraph (1) of Article 24 of the principal Scheme (which Article relates to the requirement to repay wrongly paid allowances) there shall be substituted the following proviso :—

" Provided that, subject to the provisions of paragraph 2 of this Article, repayment of sums by way of an allowance in pursuance of the original decision shall not be required under this paragraph in any case where it is shown to the satisfaction of the Board that in the obtaining and receipt of those sums the person concerned, and any person acting for him, has throughout used due care and diligence to avoid overpayment."

Amendment of Article 26 of the principal Scheme

8. In Article 26 of the principal Scheme (which Article relates to contracting out Schemes), after the words "Articles 2 and 4" there shall be inserted the words "and Articles 7A and 7B".

Dated this Seventh day of February, 1962.

John Boyd-Carpenter,
Minister of Pensions and National Insurance.

We consent.

Dated this Eighth day of February, 1962.

Michael Hughes-Young,
John Hill,
Two of the Lords Commissioners of Her Majesty's Treasury.

EXPLANATORY NOTE

(This Note is not part of the Scheme, but is intended to indicate its general purport.)

This Scheme amends the provisions of the Workmen's Compensation (Supplementation) Scheme, 1951, in consequence of the Family Allowances and National Insurance Act, 1961, to improve and extend the allowances payable out of the Industrial Injuries Fund in respect of injury or disease arising out of pre-1948 employment. It does not apply to persons entitled to the allowances for total incapacity or disablement provided by the Workmen's Compensation and Benefit (Supplementation) Act, 1956, those rates having been increased by the 1961 Act.

The new Part IIA, introduced into the principal Scheme, provides for the payment of allowances at a weekly rate not exceeding ten shillings to persons who are or have since the 20th December, 1961, been entitled to weekly payments by way of workmen's compensation in consequence of accidents happening or diseases contracted since the end of 1923. Subject to certain exceptions, the maximum weekly rate of allowances payable under the principal Scheme for accidents happening or diseases contracted before 1924 is increased by ten shillings.

In addition, the Scheme brings the condition for an increase for a dependent wife not residing with her husband into line with similar provisions in the main Insurance Schemes, and makes changes, corresponding to those made by the 1961 Act, in the condition under which a person is liable to refund an overpayment of an allowance.

The remaining amendments are of a minor or consequential nature.