1979 No. 275

SOCIAL SECURITY

The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 4) Regulations (Northern Ireland) 1979

Made . . . . . *6th August* 1979

Coming into operation . . . *3rd September* 1979

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 76 and 77 of the Social Security (Northern Ireland) Act 1975(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 4) Regulations (Northern Ireland) 1979, and shall come into operation on 3rd September 1979.

(2) In these regulations the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1977(b) are referred to as "the principal regulations".

Amendment of the principal regulations relating to prescription of occupational deafness

2. Part I of Schedule 1 to the principal regulations shall be amended by the substitution, for paragraph 48 thereof, of the paragraph set out in the Schedule hereto.

Amendment of regulation 6 of the principal regulations

3. Regulation 6 of the principal regulations (date of development) shall be amended by the substitution, for sub-paragraph (*c*) of paragraph (2), of the following sub-paragraph—

"(*c*) 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—

(i) 3rd September 1979 in the case of a claim made before that date which results in the payment of benefit commencing on that date, and

(ii) in any other case, the date on which such claim is made as results in the payment of benefit; or".

Substitution for regulation 38 of the principal regulations

4. There shall be substituted, for regulation 38 of the principal regulations, the following regulation—

(a) 1975 c. 15

(b) S.R. 1977 No. 272 (II, p. 1478), to which there are amendments not relevant to these regulations

"Occupational deafness—time limit for claiming benefit

38.—(1) Regulation 14 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1977(**c**) (time for claiming benefit) shall not apply in relation to occupational deafness.

(2) Disablement benefit shall not be paid in pursuance of a claim in respect of 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 unless the claim is made within the period of 12 months beginning on 3rd September 1979 and all the circumstances specified in any one of paragraphs (3), (4) and (5) obtain.

(3) The circumstances first mentioned in paragraph (2) are that—

(*a*) before 3rd September 1979 the period or periods for which the claimant was employed in one or more occupations specified in paragraph (7) (being the occupations set out in the second column of paragraph 48 of Part I of Schedule 1 hereto as it was before 3rd September 1979) did not amount in aggregate to 20 years;

(*b*) before 3rd September 1979 the period or periods for which he was employed in one or more occupations now set out in the second column of the said paragraph 48 amounted in aggregate to not less than 20 years; and

(*c*) at some time in the 12 months immediately preceding 3rd September 1979 he was employed in an occupation now set out in the second column of the said paragraph 48.

(4) The circumstances mentioned secondly in paragraph (2) are that—

(*a*) the claimant was employed in one or more occupations specified in paragraph (7) for a period or periods amounting in aggregate to not less than 20 years and that period or the last of those periods ended before 28th October 1973; and

(*b*) at some time in the 12 months immediately preceding 3rd September 1979 he was employed in an occupation now set out in the second column of the said paragraph 48, not being an occupation specified in paragraph (7).

(5) The circumstances mentioned thirdly in paragraph (2) are that—

(*a*) before 3rd September 1979 a claim was made by or on behalf of the claimant in respect of occupational deafness within the proper time limit (having regard to the provisions of paragraph (2), or, as the case may be, regulation 10(1) of the National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations (Northern Ireland) 1974(**d**));

(*b*) at the time of that claim he was a person in relation to whom occupational deafness was, by virtue of regulation 2(*d*), a prescribed disease; and

(*c*) that claim was disallowed because the claimant was not suffering from occupational deafness as it was then defined.

(6) A claim to be paid benefit by virtue of paragraph (5) may be disallowed by the insurance officer, local tribunal or Commissioner, as the case may be (hereinafter called 'the determining authority'), without referring the disablement question to a medical board or medical appeal

(c) S.R. 1977 No. 351 (II, p. 1824), to which there are amendments not relevant to these regulations

(d) S.R. 1974 No. 218 (I, p. 931)

tribunal where the determining authority is satisfied from the medical evidence given on the disallowed claim that the claimant was not, at the time of that claim, suffering from occupational deafness as now defined in paragraph 48 of Part I of Schedule 1 hereto.

(7) The occupations mentioned in paragraphs (3)(*a*) and (4)(*a*) are any occupation involving—

(*a*) 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

(*b*) the use of pneumatic percussive tools on metal in the shipbuilding or ship repairing industries; or

(*c*) work wholly or mainly in the immediate vicinity of drop-forging plant or forging press plant engaged in the shaping of hot metal.".

Substitution for regulation 39 of the principal regulations

5. There shall be substituted, for regulation 39 of the principal regulations, the following regulation—

"*Occupational deafness—further claim*

39.—(1) In the event of disallowance of a claim for disablement benefit in respect of occupational deafness because the claimant has failed to satisfy the minimum hearing loss requirement prescribed in column 1 of paragraph 48 of Part I of Schedule 1 hereto, disablement benefit shall not be paid in pursuance of a further claim in respect of occupational deafness made by or on behalf of that claimant unless—

(*a*) it is a claim made after the expiration of 3 years from the date of the disallowed claim; or

(*b*) it is the first claim made within 12 months of the claimant permanently ceasing to be employed in any occupation specified in column 2 of paragraph 48 of Part I of Schedule 1 hereto; or

(*c*) it is the first claim made by him or on his behalf on or after 3rd September 1979, and no claim so made before that date has been determined on or after it.

(2) A claim to be paid benefit by virtue of paragraph (1)(*c*) may be disallowed by the insurance officer, local tribunal or Commissioner, as the case may be (hereinafter called 'the determining authority'), without referring the disablement question to a medical board or medical appeal tribunal where the determining authority is satisfied from the medical evidence given on the disallowed claim that the claimant was not, at the time of that claim, suffering from occupational deafness as now defined in paragraph 48 of Part I of Schedule 1 hereto.".

Substitution for regulation 45 of the principal regulations

6. There shall be substituted, for regulation 45 of the principal regulations, the following regulation—

"*Occupational deafness—lower and upper limits of assessment*

45.—(1) Subject to the provisions of Schedule 8 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 110dB measured in each case in accordance with the provisions of column 1 of paragraph 48 of Part I of Schedule 1 hereto.

(2) In its application to the first assessment made in pursuance of a claim made before 3rd September 1979 by a person to whom disablement benefit by reason of occupational deafness is payable in respect of a period before 3rd September 1979, paragraph (1) shall have effect as if '90dB' were substituted for '110dB'.

(3) In the case of a person to whom disablement benefit by reason of occupational deafness was payable in respect of a period before 3rd September 1979—

(*a*) if no assessment of his disability has been made (other than an assessment to which paragraph (2) applies), reviewed or varied since that date, the rate of any disablement benefit payable to him shall be the rate which would be payable if in paragraph (1) '90dB' were substituted for '110dB'; but

(*b*) if an assessment or assessments of his disability has or have been made (other than an assessment to which paragraph (2) applies), reviewed or varied since that date, the rate of any disablement benefit payable to him shall be either—

(i) the rate which was payable to him immediately before the first occasion on which such a making, review or variation of an assessment took place, or

(ii) the rate which would have been payable apart from the provisions of this paragraph,

whichever is the more favourable to him.".

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 6th August 1979.

(L.S.)

T. M. Lyness
Assistant Secretary

Description of disease or injury	*Nature of occupation*
"48. Substantial permanent sensorineural hearing loss amounting to at least 50dB in each ear, being due in the case of at least one ear to occupational noise, and being the average of pure tone losses measured by audiometry over the 1, 2 and 3 kHz frequencies (occupational deafness).	(*a*) The use, or supervision of or assistance in the use, of pneumatic percussive tools, or the use of high-speed grinding tools, in the cleaning, dressing or finishing of cast metal or of ingots, billets or blooms; or (*b*) the use, or supervision of or assistance in the use, of pneumatic percussive tools on metal in the shipbuilding or ship repairing industries; or (*c*) the use, or supervision of or assistance in the use, of pneumatic percussive tools on metal, or for drilling rock in quarries or underground, or in coal-mining, for at least an average of one hour per working day; or (*d*) work wholly or mainly in the immediate vicinity of drop-forging plant (including plant for drop-stamping or drop-hammering) or forging press plant engaged in the shaping of hot metal; or (*e*) work wholly or mainly in rooms or sheds where there are machines engaged in weaving man-made or natural (including mineral) fibres, or in the bulking up of fibres in textile manufacture; or (*f*) the use of machines which cut, shape or clean metal nails; or (*g*) the use of plasma spray guns for the deposition of metal.".

EXPLANATORY NOTE

(This note is not part of the regulations but is intended to indicate their general purport.)

These regulations amend the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1977 by extending the definition of occupational deafness to substantial permanent sensorineural hearing loss of at least 50dB in each ear, being due in the case of at least one ear to occupational noise, and by adding a number of occupations to those prescribed in relation to occupational deafness.

The upper limit of 100 per cent at which extent of disablement is to be assessed is now to apply where the hearing loss in each ear is 110dB, instead of 90dB as formerly; but persons to whom benefit in respect of occupational deafness was already payable before these regulations came into operation are not to receive benefit at a lower rate than before.

There are transitional provisions whereby the rule that benefit may not be paid where a claim is made later than 12 months after the claimant has left a prescribed occupation, and the rule that after a claim has been disallowed because the claimant failed to satisfy the hearing loss requirement no further claim may be made for 3 years, are relaxed in relation to claimants who did not satisfy the requirements of the regulations before amendment but now satisfy them.