

**The National Insurance (Industrial Injuries) Act, 1946 / with general introduction and annotations by N.P. Shannon and Douglas Potter.**

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THE  
NATIONAL INSURANCE  
(INDUSTRIAL INJURIES)  
ACT, 1946

BY  
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*Of Gray's Inn*

AND  
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Reprinted from BUTTERWORTHS' EMERGENCY  
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# THE NATIONAL INSURANCE (INDUSTRIAL INJURIES) ACT, 1946

WITH GENERAL INTRODUCTION AND ANNOTATIONS

BY  
N. P. SHANNON Esq.  
*Of Gray's Inn*

AND  
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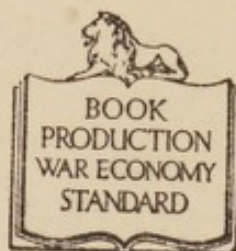




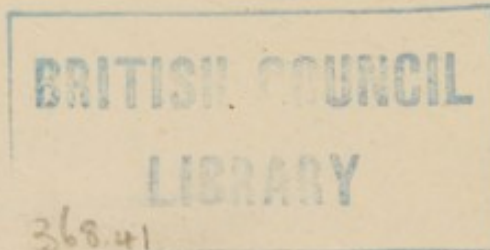
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See also from Employer's liability

2 see also " "

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## PUBLISHERS' ANNOUNCEMENT

The National Insurance (Industrial Injuries) Act, 1946, received the Royal Assent on July 26th, 1946. The essential purpose of the Act is to substitute, in place of the remedies against their employers conferred upon workmen by the Workmen's Compensation Acts, 1925-1945, an insurance scheme in respect of industrial injuries. The Act is thus one of the most important Acts affecting workmen that has been placed on the Statute Book for a considerable number of years. When the Act is brought into operation by a day being appointed by the Minister of National Insurance, all persons employed in insurable employment will be insured in the manner provided by the Act against personal injury caused by accident arising out of and in the course of their employment.

Hence, although the Act is not yet in operation, and cannot be brought into operation until the various regulations necessary for its working have been made, pursuant to its provisions, the Publishers considered that members of the profession would wish to have in their hands as early as possible a fully annotated text of the Act.

In this book the text of the Act is preceded by a comprehensive General Introduction which explains the background to the Act and describes in detail the new system of industrial injuries insurance which the Act introduces. It should also be noted that, unlike the old Workmen's Compensation Acts which the present Act replaces, provision is now made in Part VI of the Act, the general effect of which is explained in Part VIII of the Introduction, for the prevention of accidents and the after-care of injured persons, including vocational training, industrial rehabilitation, etc.

For some time to come, even after the Act is brought into operation, the Workmen's Compensation Acts, 1925-1945 will retain some of their importance, because they will still apply to accidents arising out of and in the course of the employment before the appointed day. In certain cases, however, additional benefits are conferred in respect of past cases by Section 82 of the Act. Subscribers are advised in any case to retain their copies of the 37th Edn. of Willis's Workmen's Compensation Acts for use in conjunction with the present work, in which "Willis" is constantly referred to.

September, 1946.

BUTTERWORTH & Co.  
(PUBLISHERS), LTD.



## REFERENCES

### THE ENGLISH AND EMPIRE DIGEST

References to cases include a reference to the volume, page and case in the English and Empire Digest where the case will be found, thus :—

*Thew v. South West Africa Co. Ltd.*, [1924] 9 Tax.Cas. 141 ; 28 Digest 23, 133.

### THE ALL ENGLAND LAW REPORTS

The citations of the reports of cases decided since the beginning of 1936 include a reference to the All England Law Reports, thus :—

*Whyte v. Clancy*, [1936] 2 All E.R. 735.

### HALSBURY'S STATUTES OF ENGLAND

References to Public General Statutes (other than to Acts or sections printed in this volume) are followed by a reference to the volume and page in Halsbury's Complete Statutes of England, where the Act or section will be found, thus :—

Finance Act, 1920 (9 Halsbury's Statutes 624).

### HALSBURY'S LAWS OF ENGLAND

References are to the Second (Hailsham) Edition, and are given by a reference to the volume followed by the number of the page, thus :—

28 Halsbury's Laws (2nd Edn.) 418.

### EMERGENCY LEGISLATION STATUTORY RULES AND ORDERS

References to Statutory Rules and Orders are followed by the Subject Division of the Loose-leaf Section of Butterworths Emergency Legislation Service (Annotated), where the Order will be found, thus :—

Emergency Service [30].

### EMERGENCY LEGISLATION STATUTES

References to the main Statutes Volume of Butterworths Emergency Legislation Service (Annotated) are given thus :—

Statutes Vol., p. 250.

References to previous Statutes Supplements are given thus :—

5 Statutes Supp. 63.

### PARLIAMENTARY OFFICIAL REPORTS

House of Lords and House of Commons Official Reports are referred to by reference to the volume followed by the number of the column, thus :—

121 H. of L. Official Report 1200.

376 H. of C. Official Report 1600.

House of Commons Standing Committee Official Reports are referred to by reference to Standing Committee A, B, or C, etc., followed by the date and the number of the column, thus :—

H. of C. Official Report, S.C.B., December 6, 1945, col. 12.

### WILLIS'S WORKMEN'S COMPENSATION ACTS

References to the 37th Edition of Willis's Workmen's Compensation Acts, 1925-1943, are given thus :—

Willis.

The Law is stated as on August 1, 1946

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# GENERAL INTRODUCTION TO THE ACT

## PART I.—THE BACKGROUND TO THE ACT

The National Insurance (Industrial Injuries) Act, 1946, which received the Royal Assent on the 26th July, 1946, and which provides for the compulsory insurance of all persons engaged in insurable employment against personal injury caused on or after the appointed day by accident arising out of and in the course of such employment, is the most revolutionary Act dealing with industrial injuries that has reached the statute book since the original Workmen's Compensation Act, 1897. The entire basis of the statutory provision is changed, and in place of a liability imposed on the employer there is substituted a compulsory insurance scheme, financed by contributions from employer, worker and the State, under which the worker is entitled to certain specified benefits in cases where he comes within the statutory formula. It seems desirable, before proceeding to review the detailed provisions of the Act, to consider briefly the background to the Act which is provided by the earlier legislation, and the accumulated experience of how it worked in practice. What is described below is the legal background. The more important background, however, and that, indeed, which gives this aspect of law its great importance, is the accident rate in productive industry. In 1938, for example, there were 179,159 non-fatal accidents and 944 fatal accidents disclosed in the report of the Chief Inspector of Factories: in 1943 the figures were 309,924 and 1,220 respectively (Table 1, p. 5 of Cmd. 6563). In coal mining, which is not included in the above figures, in every year one workman out of every six engaged in the industry meets with an accident.

**The common law position.**—Before July 1, 1898, when the Workmen's Compensation Act, 1897 (Willis's Workmen's Compensation Acts (37th Edn.) (hereinafter cited as "Willis"), p. 1127) came into operation, there was no legal right to compensation for any industrial injury unless on the provable facts:—

- (i) a common law action based on the negligence of the employer could be brought; or
- (ii) an action for breach of a statutory duty imposed on the employer could be brought; or
- (iii) in the case of the wife, husband, parent or child of a deceased workman, an action could be brought for their benefit under the Fatal Accidents Act, 1846 (12 Halsbury's Statutes 335), in which case also it was necessary to establish negligence or breach of statutory duty on the part of the employer.

The two great difficulties in the way of most claims at common law based on negligence were (i) that although in most cases a master is liable for the negligence of his servants, under the doctrine of common employment if the person whose negligence caused the injury and the person suffering the injury were engaged in a common employment for the same master, and that master had taken all reasonable care in selecting competent servants, the master was not liable; and (ii) in many, perhaps the majority, of cases, accidents happen without it being able to be shown that anyone was negligent. There was, of course, a residue of liability which remained personal to the employer, for he was under a general duty to superintend and properly to control his work in the interests of the safety of his servants, and this duty extended to (i) the provision of proper and suitable plant; (ii) the selection of fit and competent servants; (iii) the operation of a proper system of working; and (iv) the observance of regulations imposed by statute. In regard to this latter obligation his liability was, and is, widest of all, because the defence of common employment has



no application, nor is it necessary to prove negligence, for the action is simply based upon there being a breach of a statutory duty causing injury to a person for whose benefit the duty was imposed.

It may be observed here that throughout the time the Workmen's Compensation Acts have operated it has still been possible for actions to be brought at common law for negligence, or for breach of statutory duty and, since it is possible in such actions to recover general damages, which may exceed the compensation that can be claimed under the Workmen's Compensation Act, 1925, such actions have not been uncommon: see also the note on "Alternative remedies", p. 7, *post*.

The common law difficulty arising because of the doctrine of common employment was alleviated, but not abolished, by the Employers' Liability Act, 1880 (11 Halsbury's Statutes 499), which rendered that doctrine inapplicable in a great number of cases. The general effect was that if the employer delegated to another his duty of superintendence in regard to the provision of proper plant or machinery and the maintenance of a proper system of working, and an accident was caused by the failure on the part of the person to whom these duties were delegated to carry them out, the defence of common employment did not apply. This Act did not prove as effective as it was expected to be: among other things, because the employer still had a defence if the act causing the injury was wilful, or was not within the scope of the servant's authority, or if the maxim *volenti non fit injuria* applied, or if the plaintiff was guilty of contributory negligence. It may be noted that this last bar to an action has recently been abolished by the Law Reform (Contributory Negligence) Act, 1945 (32 Statutes Supp. 63) which, in section 2, contains special provisions dealing with workmen and employers.

The main difficulty, however, was that in the majority of cases an accident was either not due to anyone's negligence, or it was not possible to prove negligence, or even to ascertain what the true cause of the accident was: the person who would have known, the workman, was, indeed, often dead.

**The Workmen's Compensation Acts, 1897-1945.**—Between 1880 and 1897 various unsuccessful attempts were made to enlarge the liability of the master while still retaining negligence on the part of the master as the test of liability, and one of the more important efforts was the Employers' Liability Bill of 1893, introduced by Mr. Asquith. These attempts to retain negligence as the basis of liability were finally abandoned in 1897, and on August 6 of that year the Workmen's Compensation Act, 1897, received the Royal Assent: the Act did not, however, come into force until July 1, 1898.

This short Act, which has only ten sections and two schedules, broke new ground by abandoning negligence and simply imposing liability to pay compensation on the employer where, in any employment to which the Act applied, "personal injury by accident arising out of and in the course of the employment is caused to a workman". Negligence on the part of the injured workman was, in itself, no defence to his claim for compensation, though his claim was to be disallowed if it were proved that the injury was "attributable to the serious and wilful misconduct of that workman" (section 1 (2) (c), Willis, 1127) and in cases where the workman was killed, or sustained serious and permanent disablement, even this was (by 1906) no bar to his claim. The formula "arising out of and in the course of the employment" has been retained in all the later Workmen's Compensation Acts, and is, indeed, made the test of entitlement to benefit under the new National Insurance (Industrial Injuries) Act, 1946, which repeals those Acts.

This 1897 Act was limited in its application to certain dangerous employments, such as employment in and about railways, factories, mines, quarries, engineering works, and building undertakings where the building, etc., being constructed or repaired or demolished exceeded thirty feet in height (see



section 7, Willis, 1130). This alone led to grave anomalies: a man's claim to compensation for the same type of accident arising out of the same work might depend on whether the building on which he was engaged was 29 or 31 feet high. Thus, although the Act covered large classes of workers in the heavier industries, it left many sections of the working population without remedy.

It should be noted that the Act did not deprive the workman of the right to sue at common law on the ground of negligence or breach of statutory duty, but gave him the right to elect his remedy, and even if he failed in his common law claim the court could, in a proper case, assess compensation under the Act (section 1 (4); Willis, 1128). Once the workman had elected to take compensation under the Act he could not, however, bring a common law claim: see also note on "Alternative remedies", *post*.

One grave defect of the Act was that it contained no provisions designed to ensure that the employer would be in a position to discharge the obligations which the Act imposed upon him. It had been suggested in the debates on the Bill that a trade insurance fund should be established, and that the provision of compensation should be out of this fund, but the proposal was rejected. Nor was any obligation imposed on the employer to insure against his own individual liability: the workman was, however, given a preferential claim in the event of bankruptcy or winding-up (section 5; Willis, 1129). Contracting out of the Act, except for the purposes of certain approved schemes, was prohibited (section 3; Willis, 1129).

Those are the main features of the original Act so far as liability is concerned, and they are features which have been preserved throughout the whole of the succeeding Acts.

The Workmen's Compensation Act, 1900 (Willis, 1137), extended the 1897 Act to workmen in agriculture, and the Workmen's Compensation Act, 1906 (Willis, 1137 *et seq.*), which repealed and replaced the earlier Acts, extended the scope of the Act so that it applied to all persons working under a contract of service or apprenticeship, with certain specified exceptions (*viz.*, persons employed otherwise than by way of manual labour whose remuneration exceeded £250 (raised to £350 in 1925 and £420 in 1942) a year; persons whose employment was of a casual nature, and who were not employed about the employer's trade or business; members of a police force; outworkers; members of the employer's family dwelling with him were excluded). The 1906 Act also conferred a right to compensation in respect of death or disablement caused by certain scheduled industrial diseases (section 8; Willis, 1143) and applied with certain modifications to masters and members of crews of ships (section 7; Willis, 1142).

There were further Acts affecting Workmen's Compensation in 1909, 1911, 1918, 1919, 1923, and these were followed by a final consolidation by the Workmen's Compensation Act, 1925 (Willis, 1 *et seq.*); there have since been amending Acts in 1926, 1927, 1930, 1931, 1934 (which imposed an obligation on owners of coal mines to insure against their liability), 1938, 1940, 1941, 1943 and 1945. Thus, although the system of workmen's compensation has run for barely fifty years, it has had a very active legislative history.

**Defects of the Workmen's Compensation Acts.**—What are the defects that have led to the system being discarded? They may be roughly classified as follows:—

1. The relation of rates of compensation to earnings, subject to a certain maximum, has not proved altogether satisfactory. Under the 1897 Act the compensation in cases of total incapacity was a weekly payment not exceeding 50 per cent. of the average weekly earnings of the workman in the employment in which he worked before the accident, but this was subject to a £1 a week maximum. The 1923 Act raised this maximum to 30s., and in the case of workmen earning less than 50s. a week the proportion of their



wages was fixed on a scale varying from 50 to 75 per cent. In the case of partial incapacity the compensation was half the difference between the pre-accident average weekly earnings and what the workman was either (i) actually earning, or (ii) able to earn in some suitable employment after the accident, subject to a maximum payment of 30s. a week. Here again, if the workman's earnings were less than 50s. a week, he was to receive a payment bearing the same proportion to the difference between his pre-accident earnings and the amount which he was earning or able to earn after the accident as the weekly payment for total disablement bore to the pre-accident earnings.

After making weekly payments for not less than six months the employer had a right, on application to the County Court, to redeem his liability by paying a lump sum, and, apart from this, he could at any time agree with the workman for a lump sum payment, though this agreement had to be registered in the County Court. Many of the evils associated with workmen's compensation were the result of improvident agreements made by workmen who acted without proper advice. In many cases, too, the attraction of a lump sum led workmen to disregard the advice of their trade union officials, or legal advisers, and the lump sum obtained was often sunk and lost in an unprofitable business.

In fatal cases the compensation was a lump sum, the amount of which depended both on the workman's earnings and on the number and extent of dependency of his family at the time of his death. Originally the minimum sum in the case of there being any dependants wholly dependent on his earnings was £150 and the maximum £300. In the case of partial dependency the sum was a proportion of this, determined by the degree of dependency. The lump sum was paid into the County Court and dealt with for the benefit of the dependants in such way as the judge thought best. By the 1925 Act the minimum amount was raised to £200 and the maximum where there were only adult dependants was raised to £400; if, however, the deceased left a widow or other member of his family (not being a child under 15) wholly dependent upon his earnings, and, in addition, one or more children under the age of 15 so dependent, the maximum sum was increased to £600.

During the war which has recently ended compensation rates have been changed twice. By the Workmen's Compensation (Supplementary Allowances) Act, 1940 (Willis, 749) an additional weekly allowance was payable in cases of total incapacity amounting to 5s. a week, or such lesser sum as would bring the total of compensation and allowance to seven-eighths of the average weekly earnings. In addition, a weekly allowance in such cases of 4s. for the first and second child, and 3s. for each subsequent child under 15 years of age was payable, but the total of compensation, supplementary allowance, and children's supplementary allowance might not exceed seven-eighths of the average weekly earnings. In cases of partial incapacity the proportion of supplementary allowances payable was that which the partial compensation bore to the total compensation.

The Workmen's Compensation (Temporary Increases) Act, 1943 (Willis, 760) provided that, in addition to the 5s. supplementary allowance mentioned above, an additional 5s. supplementary allowance was payable after the first 13 weeks disability, and that, in the case of a male workman who had a wife who was married to him at the time of the accident, a further supplementary allowance of 5s. a week was payable for the first 13 weeks of disability, and this was increased to 10s. thereafter. The total of these allowances, plus compensation, might not exceed two-thirds of the average earnings. The children's supplementary allowances were increased to 5s. for all children, but these, added to the other supplementary allowances and compensation, might not exceed seven-eighths of the average earnings.

In addition, the amounts payable in fatal cases were increased to the maximum of £700.



These war-time Acts thus made a substantial breach in the principle of basing compensation upon earnings instead of upon needs, and, apart from the 1948 Act, the position had become full of anomalies. It will be observed that the Acts simply gave compensation for loss of earning capacity, and did not provide compensation either for the injury as such, or for the disability resulting therefrom. Nor did they make good the entire loss: they merely provided a measure of partial relief.

2. Although in the majority of cases employers insured, there was no state guaranteed certainty that the compensation to which a person was entitled would in fact be paid.

3. The workmen's compensation system does not fit, and could not be made to fit, into any comprehensive scheme of social insurance against unemployment, ill health and old age.

4. Administration costs were excessive. The cost of administration for employer's liability insurance conducted by commercial companies ranged from 45 per cent. of the premiums to 7 per cent., and those of mutual insurance companies and associations averaged about 20 per cent. This takes no account of the costs incurred by or on behalf of the workman in making claims; see the Beveridge Report, Cmd. 6404, p. 37 and Appendix E, where it is made clear that these high costs do not reflect on the efficiency of the insurance companies, but on the system with which they had to deal.

5. Most serious of all the defects of the system was the way in which the provisions of the Acts for the determination of disputes had worked in practice.

In introducing the Bill in 1897 Sir Matthew White Ridley, the Home Secretary, said that the Bill is "defined and limited so that both parties may know where they stand; it provides an inexpensive method of settling questions that must arise, and if it be true that legislation of this kind ought to aim at being simple, immediate, and effective, this Bill has been conceived with that object".

These high hopes were not to be fulfilled. As pointed out in Part II of the White Paper on Social Insurance (Cmd. 6551, September, 1944) "it was originally contemplated that disputes would generally be settled by informal arbitration by a Committee representative of the employer and his workmen, or by an arbitrator agreed on by the parties, or by the County Court Judge, a form of procedure which was described by the Attorney-General at the time as something in the nature of a domestic forum which should settle matters in a cheap and expeditious manner. Except in the Cumberland and Durham coalfields, where representative committees have been set up, this intention has not been realised. Disputes are generally settled, subject to appeal on questions of law to the Court of Appeal and the House of Lords, by arbitration in the County Court: and this arbitration has developed into a regular legal proceeding" (paragraph 11).

It could hardly have been otherwise. On the one side is the workman, who naturally wishes to get everything to which he is entitled. He is left to make a claim in a way which, for all practical purposes, puts him in the position of a plaintiff in an ordinary county court action, and, of course, the onus of proof by admissible evidence according to the ordinary law of evidence rests upon him. On the other side there is not, in practice, in the vast majority of cases, even the employer as a virtual defendant, but an insurance company or mutual insurance society, which is not interested in the workman as a human being at all. It is concerned solely with not paying out more than it is legally liable to pay. Most insurance companies acted fairly, but as malingering and exaggeration (conscious or otherwise) were not unknown, as every practitioner in this branch of work can testify, a claims manager had to be careful, and was apt to become a little hard headed at times. The obvious result was that a proceeding which it was innately desirable should be a friendly affair, the chief concern being the



workman's well being and restoration to health, degenerated too often into a protracted wrangle with a long court hearing, often conducted with a considerable degree of acrimony on both sides. Then again, before a workman got his award, and subsequently at intervals when there were signs of recovery and being fit for work, the system necessitated what the workman felt were hostile medical examinations by doctors nominated by the employer: the doctors were normally (not always) sympathetic, but the workman usually felt that they were against him.

On the whole it may be fairly said that the system of claims and settling disputes was one of the worst features of the system, and it added enormously to the total cost of administration.

It is not as if there were but few contentious cases. In the House of Commons debate on the Second Reading of the 1945 Bill (414 H. of C. Official Report 268) the Minister of National Insurance said that there were some 3,000 reported leading cases noted in Willis, and certainly that book, which has gone through 37 editions since August 31, 1897, and the text of which now runs to nearly 1,200 pages, bears witness to the highly contentious nature of this branch of law: it has, in fact, become a branch for specialists, and it has its own set of law reports, which now run to forty-seven volumes (Minton-Senhousie's and Butterworth's Workmen's Compensation Cases).

Nor do the reported cases give a true picture. In 1938, a typical year for which full judicial statistics are available, there were 4,572 applications for arbitration in all (though more than half were settled, withdrawn, or not proceeded with, before the hearing). In addition there were 22,454 memoranda registered, of which 3,136 were for lump sum settlements without there being any previous weekly payments, and 16,499 agreements for the redemption of weekly payments by lump sum settlements. In addition there were 75 appeals to the Court of Appeal.

While, therefore, it is impossible to deny that the Workmen's Compensation Acts have conferred great benefits on the wage earning classes, and while the system is entitled to a measure of respect as being the first step forward towards a greater measure of economic security for a large part of the population, it is not difficult to make out a case for attempting to devise a better scheme. After all, it is inherently improbable in the nature of things that the first attempt at this kind of legislation, made almost half a century ago, should not be able to be bettered in the light of accumulated experience.

**Proposals for reform.**—On December 28, 1938, a Royal Commission was appointed to inquire into and report on the operation and effects of the system of workmen's compensation for injuries due to employment, and the relation of this system to other statutory systems for providing benefits or assistance to incapacitated or unemployed workmen. This Commission began its sittings early in 1939. It examined 125 witnesses and published fourteen volumes of minutes of evidence before it was found impracticable to proceed further on account of the conditions produced by the war. This suspension of activity occurred in the early summer of 1940. In June, 1941, the Beveridge Committee was appointed to survey existing national schemes of social insurance and allied services, including workmen's compensation, with special reference to inter-relation of the schemes, and the Royal Commission on Workmen's Compensation made available to the Beveridge Committee such material as had been assembled by the Commission.

Sir William Beveridge's Report was published in November, 1942 (Cmd. 6404) and advised the abolition of the separate scheme of workmen's compensation based upon the legal liability of the individual employer. Having regard to this, and to the Government action referred to below, the Royal Commission felt that no further report by them would serve any



useful purpose, and the Commission therefore ceased to exist (December 22, 1944; Cmd. 6588).

In September, 1944, the Government announced its proposals in two White Papers on Social Insurance. Part I deals with social insurance generally (except for industrial injury) and Part II deals with the proposals for a new scheme of industrial injury insurance, and it is with this latter that we are here concerned. Part I is now embodied in the National Insurance Act, 1946, referred to throughout this book as "the National Insurance Act".

Sir William Beveridge had reported that the existing scheme of workmen's compensation was "based on a wrong principle and has been dominated by a wrong outlook", and recommended that provision for industrial disability should be made as part of a unified scheme of social insurance of a contributory character, the benefits being paid out of a central fund which would be maintained by contributions of employers, workmen and the State, and would be administered by a Minister: the passages of Cmd. 6404 dealing with workmen's compensation are paragraphs 77-105, 258-264, 289-291, 323, 331-336, 353, 360, 366, 393-395 and 401. See also paragraphs 30 and 36-46 of Appendix A and Appendix E (Administrative Costs of Various Forms of Insurance).

The Government accepted the general recommendation that the existing system of workmen's compensation should be abolished, and that a new scheme founded on social insurance principles should be instituted which should (subject to certain specific exceptions) bring within its scope all persons working under a contract of service, including non-manual workers, without any income limit. It was also accepted that claims should be dealt with by administrative, rather than by legal, procedure and that the responsibility for the general administration of the new scheme should rest on the authority responsible for the general scheme of social insurance (see paragraph 24 of Cmd. 6551).

The Government did not, however, accept all Sir William Beveridge's recommendations, and in particular rejected (i) the proposed limitation of the special rates of benefit for industrial disability to cases of more than thirteen weeks' duration; (ii) the retention of the system of relating industrial pensions to earnings; (iii) the retention of a lump sum payment to dependants in fatal cases; (iv) the suggestion that there should be a special levy upon employers in certain scheduled hazardous industries. For the Government's reasons see paragraphs 26-31 of Cmd. 6551.

The Government proposals were debated in both Houses of Parliament (see 404 H. of C. Official Report 1387 *et seq.* and 1555 *et seq.* and 134 H. of L. Official Report 1061 *et seq.*) and in general met with approval, and a Bill "to substitute for the Workmen's Compensation Acts, 1925 to 1943, a system of insurance against personal injury caused by accident arising out of and in the course of a person's employment and against prescribed diseases and injuries due to the nature of a person's employment, and for purposes connected therewith" was formally presented to Parliament on June 12, 1945, immediately before that Parliament was dissolved. It is from a new version of that Bill presented to the House of Commons on August 23, 1945, that the present Act has come into being.

Throughout this book there are references to sections of Social Insurance Acts on which this Act has been modelled. Those Acts are almost all repealed by the National Insurance Act when it comes into force. This book has, for the sake of clearness, been written as if those Acts, and the Workmen's Compensation Acts, were already repealed.

**Alternative remedies.**—It has been noted above that under all the Workmen's Compensation Acts the right of the workman, where he could prove negligence or breach of statutory duty for which the employer was legally responsible, to sue for damages at common law was preserved (see



*ante*). There may also be cases in which an injured workman has a claim to compensation under those Acts, and also a claim against a third party at common law—e.g., a person may, in the course of his employment, be injured in the street by being negligently run over. Sir William Beveridge briefly examined the possible provisions that could be made for dealing with the problem of alternative remedies in paragraphs 81, 98, and 258–264 of Cmd. 6404, but made no recommendations. On July 19, 1944, the Home Secretary appointed a Committee under the chairmanship of Sir Walter Monckton (i) to consider . . . how far the recovery or proceedings for the recovery of damages or compensation in respect of personal injury caused by negligence should affect, or be affected by, the provision made or proposed to be made under Workmen's Compensation legislation, or under any social insurance or other statutory schemes for affording financial or other assistance to persons incapacitated by injury or sickness, or their dependants; (ii) to consider, having regard to any relevant observations . . . in the Report of the Law Revision Committee on Contributory Negligence (Cmd. 6032) whether, in the case of injuries to workmen due to their employment, any alteration is desirable in the law governing the liability of employers and third parties to pay damages or compensation to workmen and their legal representatives and dependants, independently of the Workmen's Compensation Acts.

In connection with the Law Revision Committee's Report referred to above, and with the Bill dealing generally with contributory negligence founded thereon, the Monckton Committee on Alternative Remedies made two Interim Reports (Cmd. 6580 and 6642, January and May, 1945) dealing with the question whether, if the law of contributory negligence should be amended, it was desirable forthwith to apply the amended law to actions brought by workmen against their employers in respect of personal injuries sustained by them at work. The Committee reported in favour of this, and in the Law Reform (Contributory Negligence) Act, 1945 (32 Statutes Supp. 63) which came into force on June 15, 1945, and which made contributory negligence no longer a bar to relief, and provided for the apportionment of liability where any person suffers damages as a result partly of his own negligence or breach of statutory duty, etc., and partly of the negligence or breach of statutory duty of any other person or persons, special provisions were inserted dealing with actions by workmen against their employers. The general effect is that the employer is in the same general position as anyone else in that he cannot plead contributory negligence as a bar to relief, but only as a ground for reducing the damages. The workman, however, is to some extent in a privileged position in that, if his action is brought within the time limit prescribed for proceedings under the Workmen's Compensation Acts, 1925 to 1945, and if the court decides that he has both a valid claim at common law and that he would have had a valid claim under the Acts, section 29 (2) of the Workmen's Compensation Act, 1925 (Willis, 527) applies so that the workman may elect whether to take the damages or the compensation. This provision is designed to meet the case of a workman's damages being so reduced because of the proof of some degree of contributory negligence that he would fare better under the Workmen's Compensation Acts.

The Monckton Committee has now presented its final report (Cmd. 6860), but its recommendations are complicated and are to be dealt with later in a separate Bill. See the Lord Chancellor's remarks (142 H. of L. Official Report 649) and accordingly there are no provisions in the present Act dealing with (i) claims by an insured person against his employer based on negligence or breach of statutory duty; or (ii) claims by an insured person against third parties. When the Act is brought into force it will therefore for the present be possible for such claims to be brought in cases where the insured person is also deriving benefits under the Act.

The final report divided its recommendations into those relating to non-



employment cases and those relating to employment cases. The recommendations are as follows :—

*Non-employment cases*

In cases where the injury is unconnected with employment under a contract of service, we recommend that :—

(1) The right of action for damages for personal injury should be retained. (Paragraph 31, p. 15).

(2) The injured person or his dependants should not be permitted to recover by way of damages and pecuniary benefits more than the maximum which he could recover from either source alone. (Paragraph 38, p. 18).

(3) The injured person or his dependants should not be required to elect between damages and benefit but should be permitted to receive benefits in full, both before and after the recovery of damages, with no obligation to repay them. (Paragraph 41, p. 19).

(4) In assessing damages the Court should take into account in diminution of damages the value of the benefits already paid in respect of the injury and the estimated value of the future benefits. The benefits to be taken into account are any cash benefits provided by way of sickness benefit, widow's benefit, guardian's allowance, and death grant under the National Insurance Act. (Paragraph 48, p. 22).

(5) In a case to which the Law Reform (Contributory Negligence) Act, 1945 (32 Statutes Supp. 63), applies, benefit should be taken into account in relation to the total damage due to the injury, and the resulting figure should then be reduced in respect of the plaintiff's contributory negligence. (Paragraph 50 (i), p. 23).

(6) In those cases in which a statute imposes a limit upon the amount of damages, benefit should be taken into account in relation to the actual loss and not to the statutory maximum. (Paragraph 50 (ii), p. 23).

(7) The responsible authority should not be given the right to recover from the defendant any payment by way of benefit, or the cost of reconditioning and vocational training, or of medical and allied treatment. (Paragraph 43, p. 21, and paragraph 54, p. 24).

(8) Notwithstanding that medical and allied services might have been obtained through the State, the injured person should be entitled to claim as part of his damage any expenditure reasonably incurred by him in obtaining similar services privately. (Paragraph 56, p. 25).

*Employment cases*

In cases where the injured person is employed under a contract of service and the injury arises out of his employment, we recommend that :—

(9) The right of action by workmen against their employers for damages for personal injuries should be retained. (Paragraph 74, p. 32).

(10) The right of action by workmen against their employers ought not to be limited to cases where the cause of the injury is the serious and wilful misconduct or gross negligence of the employer or of some person who has superintendence entrusted to him, whilst in the exercise of such superintendence. (Paragraph 76, p. 32).

(11) In the case of claims by workmen against their employers, or third parties, founded on breach of statutory duty, the defendant should not be liable in damages if he proves that it was not reasonably practicable for himself, or for his servants or agents, other than (i) the injured person, or (ii) another servant or agent who committed the breach while acting outside the scope of his employment, to avoid or prevent the breach. In such a case, the defendant should not be relieved of his common law obligations apart from statutory duties. (Paragraph 82, p. 35, and paragraph 97, p. 42).

(12) The doctrine of common employment should be abolished. (Paragraph 89, p. 40).

(13) The recommendations numbered (1) to (8) above should apply whether the action is brought against the injured person's employer or a third party. In regard to the application of recommendation (4), the benefits to be taken into account, in addition to those therein specified, are the cash benefits provided under the National Insurance (Industrial Injuries) Act. (Paragraphs 92 and 96, p. 41, and paragraph 98, p. 42).

(14) Notice of accident (under provisions similar to those of section 14 of the Workmen's Compensation Act, 1925) (Willis 414) should be required in actions based on breach of common law or statutory duty. Notice of accident given to a prospective defendant under the National Insurance (Industrial Injuries) Act, should also suffice for the purpose of an action for damages. No notice of claim, as distinct from notice of accident, should be required. (Paragraphs 105 and 106, p. 46).

(15) In actions brought in the lifetime of the defendant, including those brought under the Fatal Accidents Act, 1846 (12 Halsbury's Statutes 335) and those to which section 21 of the Limitation Act, 1939 (32 Halsbury's Statutes 235) at present applies, the time limit for commencing an action should be three years. It is for consideration whether a similar time limit should be introduced in Scotland. (This recommendation is made on the assumption that it will also be applied to non-employment cases.) (Paragraph 106, p. 46).



## PART II.—THE NEW SYSTEM OF INDUSTRIAL INJURIES INSURANCE

**The classes of insured persons and insurable employments.**—Although in certain cases (as to which, see sections 81 and 82, *post*) benefits may be paid which have not been insured against, the new scheme is essentially a compulsory insurance scheme under which all persons in insurable employment and their employers pay contributions in consideration for which they become in certain specified events entitled to certain benefits, and the State adds its share to the general fund out of which these benefits are paid. The whole scheme is operated and managed by the Minister of National Insurance (hereinafter referred to as "the Minister").

The scope of the Act has been made as wide as possible, and subject to certain specific exceptions, all persons employed in Great Britain under any contract of service or apprenticeship are in insurable employment within the meaning of the Act, regardless of the work they do or the income which they receive; section 1 and Schedule I, Part I, paragraph 1, *post*. That in itself is wider than the corresponding provisions of the Workmen's Compensation Acts, 1925 to 1945, for section 3 (2) (a) of the 1925 Act as amended (Willis, 161) excluded non-manual workers whose remuneration exceeded £420 a year. In addition certain persons who are "employed", but who are not necessarily under a contract of service, are also in insurable employment: these include members of lifeboat crews who work under the Royal National Lifeboat Institution, persons employed by any local or public authority constituted in Great Britain, persons who ply for hire with vehicles bailed to them under a contract of bailment, such as taxi cab drivers, and members of fire and rescue brigades, first aid and salvage parties at factories, mines and works. In two types of cases persons employed outside Great Britain are included: (i) seamen, including licensed and apprenticed pilots, and other persons employed for the purpose of the vessel or of the cargo or of passengers carried, in British and British owned ships; (ii) pilots and crews and other persons employed on British civilian aircraft. In the case of seamen and airmen the Act may, however, be modified by Regulations made under section 77, *q.v.*, *post*, and notes thereto.

See generally, as to what are insurable employments, the notes to Section 1 of the Act, and to Part I of Schedule I thereto, *post*.

Although a person falls within one or other of the above classes, he will still not be in insurable employment if his employment falls within one or other of the eight classes of "excepted employments" specified in Part II of Schedule I to the Act, *q.v.* *post*, and notes thereto. The excepted employments include (1) any prescribed employment in Great Britain under a public or local authority constituted in Great Britain, the intention here being, no doubt, to except persons who are already catered for; (2) certain employment in ships; (3) certain employment in aircraft; (4) employment of a casual nature unless it is for the purposes of the employer's trade or business, or as a pilot, or for the purposes of any game or recreation where the persons are engaged or paid through a club; (5) employment in the service of the husband or wife of the employed person; (6) employment by other near relatives, provided the employment is not for the purposes of trade or business, and provided that the employment is in a private dwelling house in which both employer and the employed persons reside; (7) such subsidiary employments as may be prescribed; (8) employment of prescribed classes where the person is employed only to an inconsiderable extent. Employment in the police was originally excepted, because of the existence of police pension schemes, but was later included, see section 78, *post*.

The Act does not apply to employment in the naval, military, or air force service of the Crown, and other employments under the Crown may by regulations be declared to be excepted employments. Apart from this the



Act applies to persons employed by or under the Crown if it would have applied to them had the employer been a private person, but there are special provisions under which Orders in Council may make modifications for the purpose of adapting the Act to the case of such persons ; see section 76, *post*, and notes thereto.

Children under the upper limit of the compulsory school age (i.e., when a child is treated as such under section 2 of the Family Allowances Act, 1945 ; 32 Statutes Supp. 75 ; see section 88, *post*) and their employers are exempt from contributions, but such children will be entitled to benefits if regulations are made providing for this under section 79, *post*. Any question which arises whether a person is a child under the upper limit of the compulsory school age is to be determined as if the question had arisen under the Family Allowances Act, 1945 ; see section 5 of that Act ; 32 Statutes Supp. 77.

The Minister has a limited power under Part III of Schedule I to make regulations to prevent anomalies in cases where the services rendered in an insurable employment on the one hand, and in an excepted employment on the other hand, are so similar that to treat them differently is anomalous. Such regulations may declare that a particular employment shall be included among the insurable, or among the excepted, employments, as may be most convenient.

If any question arises whether a person is or was employed in insurable employment it is to be determined by the Minister, but there is a right of appeal to the High Court on a question of law ; see Part III of this Introduction, on the determination of questions and claims, *post*.

**The Industrial Injuries Fund and Contributions.**—A new fund called the Industrial Injuries Fund has been established for the purpose of providing the money with which to pay benefits, and for making other payments under the Act. This fund is under the control and management of the Minister, and into this fund all contributions are to be paid, as well as the money provided by Parliament (see Part V, "Central Administration and Finance", *post*).

As from the day which the Minister appoints for the coming into force of the Act, every person employed in insurable employment (referred to as an "insured person"), and every employer of such person, becomes liable to pay weekly contributions unless they are specifically exempted from so contributing ; section 2 (a). The rates of contribution are the same for both employer and insured person, viz., 4d. per week for men over the age of 18 and 2½d. per week for boys under that age ; 3d. per week for women over the age of 18 and 2d. per week for girls under that age : see section 2 (a) and Schedule II, *post*.

Any question at what rate contributions are payable by or in respect of any person or class of persons is to be determined by the Minister (section 36 (1) (a) (iv), *post*), but any person aggrieved may appeal on a point of law to the High Court ; section 37 (1). See generally Part III of this Introduction, *post*.

Insured persons, being mariners and airmen, may be exempted from liability to pay contributions by regulations made under section 77 of the Act, but such regulations must be laid in draft before Parliament and approved by resolution of each House before they become operative (see section 87 (i), *post*), and an insured person or his employer, or both, may be exempted by regulations from any liability to pay contributions in the case of subsidiary employments, and where the insured person is employed to an inconsiderable extent only, see Part II of Schedule II, *post*.

Any question arising whether a person employed in insurable employment or his employer is exempt from the payment of contributions as provided in Part II of Schedule II, *post*, is to be determined by the Minister (section 36 (1) (a) (ii), *post*), but any aggrieved person may appeal on a



point of law to the High Court ; section 37 (1), *post*. See generally Part III of this Introduction, *post*.

A child and his employer are exempt from payment of contributions while the child is under the upper limit of the compulsory school age ; section 79 (1), *post*.

In addition to the money so arising, there is to be paid into the Industrial Injuries Fund out of moneys provided by Parliament, and at such times and in such manner as the Treasury may prescribe, sums estimated to be equal to one fifth of the aggregate amount of contributions paid as above ; see section 2 (b), *post*, and Part V of this Introduction, *post*.

**Payment of contributions.**—Except where Regulations otherwise provide, the employer is liable in the first instance to pay both his own and the insured person's contribution (section 3 (1), *post*). The intention is that insurance cards shall be issued similar to those in use in connection with health and unemployment insurance and that stamps shall be affixed thereon each week by the employer ; regulations dealing with this will be made, and these may provide for alternative methods of payment ; see sections 65 and 66, *post*. In the Explanatory Memorandum on the Bill (June, 1945, Cmd. 6651) it is stated that when the industrial injuries scheme and the general scheme for health, unemployment, etc., insurance come into operation, contributions under both schemes generally will be collected by one stamp on one card. Under section 3 (2) and Part IV of Schedule II the Minister may also make arrangements with any body of persons liable to make employers' contributions whereby all the duties to be performed in connection with the payment of contributions will be undertaken on behalf of that body by an employment exchange.

Except as noted below, a weekly contribution is payable for each period of seven days commencing from midnight between Sunday and Monday (which weekly period is called a "contribution week" ; section 88 (1), *post*) during the whole or any part of which an insured person is employed, but where one weekly contribution has been paid in respect of an insured person for any week no further contribution is payable in respect of him for the same week ; section 3 (2), *post*. If, however, (i) no services are rendered by the insured person during any week and no remuneration is paid wholly or partly in respect of any day other than one on which he either is incapable of work by reason of some specific disease or mental or bodily disablement and would otherwise have been working, or does not work in a normal week, no contribution is payable in respect of the insured person for that week ; section 3 (2), *post*. The first of these cases would cover holidays without pay, or cases where, due, e.g., to shortage of work, services were rendered in alternate weeks only. The second covers cases where the insured person is absent because of accident or ill health. In this second case it is immaterial whether remuneration is paid or not : the exemption still applies. In the first case there is no exemption if any remuneration is paid, and the Minister may make regulations for determining whether any payments received, or to which the insured person is entitled, shall be deemed to be attributable to any day during any period when no services are rendered : section 3 (3), *post*.

**Who are deemed to be employers.**—In cases where a person works under a contract of service or apprenticeship, and this covers the great majority of insured persons, there can be no doubt who the employer is, at least in most cases, for the employer is the person with whom the insured person has made his contract.

Where a person is employed successively by more than one person during the same contribution week, e.g., charwomen and cleaners, the person who first employs him in that week is to be deemed the employer for the purpose of the provisions of the Act relating to contributions, unless, under regulations made as described below, some different provision is made ; section 80 (2), *post*.



In three classes of case the Minister may by regulations provide that a person prescribed by regulations shall be treated for the purposes of the Act as the insured person's employer. This power exists in relation to (i) insured persons who are not employed under a contract of service or apprenticeship; (ii) any other insured person employed for the purposes of any game or recreation and engaged or paid through a club; (iii) any other insured person in whose case it appears to the Minister there is special difficulty in the application of all or any provisions of the Act relating to employers; section 80 (1), *post*. See also notes to section 1, *post*, as to the meaning generally of "employer" and "employment".

The question who is liable for payment of contributions as the employer of any insured person is to be determined by the Minister (section 36 (1) (a) (iii), *post*), but any person aggrieved by his decision may appeal on a point of law to the High Court; section 37 (1), *post*. See generally Part III of this Introduction, *post*.

**Contributions erroneously paid.**—Regulations are to be made providing for the return to any person and to his employer of any contributions paid by them under the erroneous belief that such contributions were payable under the Act, but this is subject to the qualification that there must be an application made for the return of the contributions within a prescribed period (not less than one year); Schedule II, Part III, paragraphs 1 and 2 (a), *post*. Any sums received by way of benefit during the period for which the contributions were erroneously paid, under the belief that the person was insured under the Act, must be deducted from the sum repaid; Schedule II, Part III, paragraph 2 (b), *post*.

**Recovery by employer of insured person's contributions.**—It was decided by the Government that it was in principle desirable that employers and insured persons should both make equal contributions to the Industrial Injuries Fund, and that they should share equally in the development and administration of the scheme by being equally represented on the Industrial Injuries Advisory Council and other bodies (see Part V of this Introduction, *post*); see paragraph 34 of Cmd. 6551. On the one hand, therefore, the Act makes provision for the employer's contribution and the insured person's contribution being in the great majority of cases the same, and, on the other hand, notwithstanding any contract to the contrary, the employer is not entitled to deduct from the wages or other remuneration of the insured person, or otherwise to recover from him, the employer's contribution; section 4 (1), *post*. Any such deduction or attempt at deduction, either as to the whole or part of the employer's contribution, is an offence which renders the employer liable on summary conviction to a fine of £10; section 4 (2). As to legal proceedings and offences see Part VII, *post*.

As noted earlier, the employer in the first instance is under the obligation to pay both the employer's and the insured person's contribution, but, provided he takes the prescribed steps, he is entitled to recover from the insured person the amount of any contributions which he has paid or will pay on his behalf; section 5 (1), *post*. In order so to recover any contributions he must comply with any regulations made in regard to the recovery by him of such contributions, and cannot recover the amount of any contribution not yet paid except under and in accordance with the provisions of section 5 (2) of the Act, *post*. In the case of an insured person who receives any wages or other remuneration from the employer, the insured person's contribution may, notwithstanding the provisions of the Truck Acts, 1831 to 1940, or any other Act, or any contract to the contrary, be recovered by means of deductions from such wages or remuneration: in the case of such persons in receipt of wages or other remuneration, if the contribution is not recovered in this way it is not recoverable at all. The deduction must, moreover (i) be made from wages or remuneration which



are paid wholly or partly in respect of the contribution week or part of the contribution week for which the contribution is payable ; and (ii) not be made of any contribution not yet paid except where it is not payable until after the date when the said wages or remuneration are paid ; section 5 (2), *post*.

In cases where wages or remuneration are paid, but not by the employer, the employer's contribution (without prejudice to any other means of recovery) is recoverable summarily as a civil debt provided proceedings are instituted within three months from the date on which the contribution was payable ; section 5 (3), *post*.

If the insured person receives no remuneration from the employer or from anyone else, the employer must pay both his own and the insured person's contribution, and has no right of recovery at all against the insured person ; section 5 (4), *post*.

**Failure to pay contributions.**—If any employer or insured person fails to pay any contribution which he is under an obligation to pay he is liable on summary conviction to a fine not exceeding £10 (section 3 (5), *post*) and an employer who is convicted of this offence is liable to pay to the Industrial Injuries Fund a sum equal to the amount which he has failed to pay ; section 67 (1), *post*. On such a conviction, if notice of intention to do so has been served with the summons or warrant, evidence may be given (a) of his failure to pay other contributions in respect of the same person during the previous two years ; and (b) of his failure to pay other contributions during those two years in respect of any other person employed by him, and on proof of such failure he is liable to pay to the Industrial Injuries Fund a sum equal to the total of all the contributions which he is so proved to have failed to pay. Any sum ordered, under these provisions, to be paid to the Industrial Injuries Fund is recoverable as a penalty (as to the effect of which provision see 21 Halsbury's Laws (2nd Edition) 637 *et seq.*), but the Minister is not precluded from recovering any sums due to the Industrial Injuries Fund by means of civil proceedings (section 69 (8), *post*) and section 70, *post*, provides that such sums shall be recoverable as debts due to the Crown, and that, without prejudice to other methods of recovery, they may be recovered summarily as civil debts in proceedings brought within three years from the time when the matter complained of arose.

It should also be noted that if an employer which is a body corporate is convicted of failure to pay contributions (and an order under section 1 (1) of the Probation of Offenders Act, 1907 (11 Halsbury's Statutes 365) ranks as a conviction for this purpose ; see section 69 (4), *post*) and is ordered to pay a sum to the Industrial Injuries Fund under the above provisions, any part of that sum which remains unpaid is a debt due to the Fund jointly and severally from any directors of the body corporate who knew, or could reasonably be expected to have known, of the failure to pay the contribution or contributions in question ; section 69 (7), *post*. There is no definition of what is meant by a director. See also, as to offences by corporations, Part VII of this Introduction, *post*, p. 36.

Sections 78, 264 and 298 of the Companies Act, 1929 (2 Halsbury's Statutes 821, 945, 969), which relate to the debts of a company which are to be paid in priority to other debts, have effect as if this Act were included in the Acts mentioned in section 264 (1) (e), and section 33 (1) of the Bankruptcy Act, 1914 (1 Halsbury's Statutes 638), which deals with the priority of debts in bankruptcy, is amended by the addition of a new paragraph (f) at the end thereof referring to all amounts due in respect of contributions payable, during the twelve months before the date of the receiving order, by the bankrupt as the employer of any persons under the National Insurance (Industrial Injuries) Act, 1946 ; section 71, *post*. These provisions are in accordance with the precedent set by the National Health and Unemploy-



ment Insurance Acts. As to their effect, see 6 Halsbury's Laws (2nd Edn.) 684 *et seq.* (companies) and 2 Halsbury's Laws (2nd Edn.) 281 *et seq.* (bankruptcy).

### **The risks insured against and entitlement to benefit**

The risks insured against under the new industrial injuries scheme are (i) the risk that the insured person will suffer personal injury caused on or after the appointed day by accident arising out of and in the course of his employment (section 7 (1), *post*), or (ii) that he will contract any prescribed disease or any prescribed personal injury other than one caused by accident arising out of and in the course of his employment, being a disease or injury due to the nature of his employment developed on or after the appointed day (section 55 (1), *post*): this second risk is dealt with in Part VI of this Introduction, *post*.

An insured person, therefore, who suffers personal injury caused by accident arising out of and in the course of the employment (being insurable employment, as to which see p. 10, *ante*, and Schedule I and notes thereto, *post*) is entitled to the benefits prescribed by the Act as appropriate to the particular case (see notes on "The basic benefits" and "Additional benefits", *post*).

This formula for entitlement to benefits is the same as that which determined the question of the employer's liability to pay compensation under all the Workmen's Compensation Acts, from 1897 down to the repeal of those Acts. The Minister of National Insurance, in justifying the retention of these words, said "we have looked at many alternative phrases which have been suggested to us as substitutes for those familiar words, but . . . after full consideration we have decided that it is better to retain the words we have already in the Acts. Not the least of our reasons for so doing was the fact that the phrase has been fully examined and interpreted by the courts, and its meaning is now reasonably clear and certain. If I may say so, I have examined it myself, and, speaking for myself with some experience as a layman and compensation officer, I am convinced that it is better to stick to the devil we know than fly to devils that we know not of": 414 H. of C. Official Report 270.

All the relevant cases are collected in Willis, 8-158, but it would be a mistake to suppose that, because the basic formula for determining entitlement under the new scheme is the same as that for determining liability under the old Acts, the position on this point remains unchanged, for there are some very important subsidiary provisions which will result in a great many persons receiving benefits under the new scheme who would have failed in claims under the Workmen's Compensation Acts. It is important that these differences should be understood.

1. **Onus of proof as to accident arising out of employment.**—Under the Workmen's Compensation Act, 1925, the onus lay upon the workman of proving his case, and if the case was left in doubt as to whether the accident arose out of and in the course of the employment, and the established facts were equally consistent with these conditions being fulfilled or not, the workman had not discharged the onus which rested upon him, and his claim failed. It was not sufficient to prove that the accident arose in the course of the employment: it must also be proved that it arose out of it. All the relevant judicial decisions on this question of onus of proof will be found collected on pp. 116-150 of Willis, and these cases show that in many cases claims failed, chiefly in fatal, and therefore the more serious cases, because of the entire absence of evidence one way or the other on the question of "arising out of the employment", although the accident clearly happened in the course of the employment.

This difficulty is, to a considerable extent, done away with by section 7 (4), *post*, which provides that, for the purposes of the present Act, an



accident arising in the course of an insured person's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment. Therefore once it is clear that the accident happens during the course of employment the insured person will be entitled to benefit unless it is shown affirmatively that it did not arise out of the employment; as to what must be proved in order to show that the accident happened "in the course of the employment", see the cases cited in Willis, 21-44.

It may also be pointed out that whereas under the old system there was a respondent employer (or, in most cases, an insurance company) who stood to gain by showing that although an accident occurred during the course of the employment it did not arise out of it, the workman has now no such opponent at all. This in itself will make a great difference in practice.

2. **Misconduct of workman.**—(i) By section 1 (1) (b) of the Workmen's Compensation Act, 1925 (Willis, 6) if the evidence proved that the injury to a workman was attributable to the serious and wilful misconduct of the workman, no compensation in respect of that injury could be awarded unless the injury resulted in death or serious and permanent disablement: as to the meaning of "serious and wilful misconduct" see the cases collected in Willis, 153-158, and in respect of "serious and permanent disablement" see *ibid.* 158.

(ii) It should, however, be noted that by section 1 (2) of the 1925 Act (Willis, 6) if an accident resulted in the death or serious and permanent disablement of the workman it was deemed to arise out of and in the course of the employment notwithstanding that the workman was, at the time when the accident happened, acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employers, or that he was acting without instructions from his employer, if such act was done for the purposes of and in connection with his employer's trade or business: for cases on this see Willis, 80-97.

In the present Act there is no disentitlement provision corresponding to (i), *supra*. The Minister of National Insurance on the second reading of the Bill (414 H. of C. Official Report 272) said "looking to the fact that before benefit becomes payable under the scheme it must still be shown that the accident arose out of and in the course of the employment we decided to drop this provision". The Minister's reference to the fact that, to be entitled to benefit, it must be shown that the accident arose out of the employment, obviously refers to that large class of cases in which it has been held that the workman's disobedience of some rule or condition of his employment has taken the act which he did right outside the scope or sphere of his duties, and that he is thus disentitled to benefit, not because of serious or wilful misconduct, but because he has not satisfied the primary condition of showing that the accident arose out of and in the course of the employment (for such cases see Willis, 46 *et seq.*). The position on this last-mentioned point will be the same under the present Act, subject to the change as to onus of proof noted above, and subject to the new provision which is noted below. The real change here is that no question of what is "serious and wilful misconduct", as such, will be in any way material under the new scheme.

There is a provision in the new scheme which takes the place of (ii), *supra*, but it differs from it in that it is not confined to cases of "death or serious and permanent disablement" (which question also ceases to be material under any of the provisions of the new scheme) and because it is differently expressed.

It is provided by section 8, *post*, that an accident shall be deemed to arise out of and in the course of employment notwithstanding that the insured person at the time of the accident was acting in contravention of any statutory or other regulations applicable to his employment, or of any



orders given by or on behalf of his employer, or that he is acting without instructions from his employer if (a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid, or without instructions; and (b) the act was done for the purposes of and in connection with the employer's trade or business (as to which latter words see the cases collected in Willis, 94-97).

The result of the above is that if the insured person shows that the accident arose in the course of the employment, it is not shown that it did not arise out of the employment merely because there was disobedience to regulations, and serious and wilful misconduct does not now disentitle a person from benefits.

**3. Travelling accidents.**—Under the Workmen's Compensation Acts it was held—and in general these cases, as to which see Willis, 21-44, will apply to the present Act—that a "workman is acting in the course of his employment when he is engaged in doing something he was employed to do . . . when he is doing something in discharge of a duty to his employer, directly or indirectly imposed upon him by his contract of service" (*St. Helen's Colliery Co. v. Hewitson*, [1924] A.C. 59 at p. 71 per Lord ATKINSON; 34 Digest 280, 2364). "The man is not in the course of his employment unless the facts are such that it is in the course of his employment, and in performance of his contract of service, that he is found in the place where the accident occurs. If there is only a right, and there is no obligation binding on the man in the matter of his employment, there is no liability" (*ibid.*, at p. 95 per Lord WRENBURY). To put shortly the simple and ordinary cases that arise, if an errand boy on an errand for his master is run over in the street that was (and will be under the present Act) an accident arising out of and in the course of his employment, because he is in the place where he is pursuant to a duty owed to his master. If, on the other hand, such a boy is injured in the street in the morning while riding or walking to his work, and before his day's employment has commenced, that accident is not one in the course of the employment: it is the result of a normal risk of the streets and has no causal connection with the employment, for so far as the employer is concerned the boy could just as legitimately have been anywhere else, and have been doing anything else, at the time. This class of case also will remain unaffected by the new Act.

There is, however, a third class of case in which a change has been made, and these were cases of real hardship under the Workmen's Compensation Acts, in which the rigid logic of the law on this point did not accord with the practical necessities of many situations. This class of case concerning the provision of transport by the employers or by other persons by arrangements made and controlled by the employers, and one of the leading cases on the whole subject, *St. Helen's Colliery Co. v. Hewitson*, [1924] A.C. 59; 34 Digest 280, 2364, presents a typical set of facts. A workman was injured in a railway accident while travelling in a special colliers' train from the colliery where he was employed to his home. The colliery company had an agreement with the railway company that the latter should run special trains between certain points for the carriage of colliers only to and from their work. The colliery company paid the railway company, and agreed to indemnify the railway company against claims by the workmen in respect of accident, injury or loss while using the trains. Any colliery workman could travel by these trains provided he signed an agreement with the railway company exempting them from liability, and the colliery company then, in return for a payment deducted each week from the workman's wages, issued him a travelling pass. The ground on which the workman was held not to be entitled to compensation was that there was no obligation to use these trains: he would have fulfilled his contract of employment by getting to the pit at the stipulated time in any way—walking, cycling, motor car or aeroplane. Similarly, when he left the pit he could go home as he wished—or not go at all—provided he got outside the colliery premises.



What he chose to do was no concern of his employer. Therefore in law the collier must be regarded as having freely entered into a contract whereby he, at a time when he was not covered by the Workmen's Compensation Acts, gave up his common law rights against the railway company in respect of accidents caused by the negligence of the company's servants.

So far as formal logic goes there may be no answer to this, but from a practical point of view the position was ridiculous, at least in many cases. For if A was to work for X. Ltd. it often happened that the only reasonably practicable means whereby he could get to and from the place of work was by using the travelling facilities provided by, or by arrangement with, his employers. And when he made use of these facilities the only terms on which he could do so were the terms dictated by his employers. It was a case of taking the employment plus the travelling as a whole, or not being employed, and in such cases there is everything to be said for regarding the travelling as part of the employment. In these circumstances it was undoubtedly a hardship that the workman should be debarred from having any claim against anyone, either under the Workmen's Compensation Acts or at common law or otherwise, if he was injured by accident while travelling to or from his work.

Section 9 of the Act, *post*, provides that an accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if (a) the accident would have been deemed so to have arisen had he been under such an obligation; and (b) at the time of the accident the vehicle is being operated by or on behalf of his employer, or some other person by whom it is provided in pursuance of arrangements made with his employer, and is not being operated in the ordinary course of a public transport service. "Vehicle" here includes a ship, vessel and aircraft, as well as road and rail vehicles.

This new provision gets rid of most of the difficulties disclosed in the cases under the Workmen's Compensation Acts (for these see Willis, 27 *et seq.*). If, for example, facts similar to those in *St. Helen's Colliery Co. v. Hewitson* (*supra*) arise, the workman will be entitled to benefits under the Act. So too if a workman is, with his employer's consent, given a lift in one of the employer's vehicles, either to or from his work, he will similarly be entitled to benefit. It will be observed that if the vehicle in question is being operated as part of an ordinary public service at the time of the accident the case is not within the Act.

**4. Accidents while meeting emergency.**—There was no specific provision in the Workmen's Compensation Acts dealing with accidents arising out of action taken by a workman in the employer's interest during the course of the employment to meet an emergency, the action being outside the scope of the ordinary employment. Judicial decisions had, however, in this case established an exception to the general rule. In the following cases, *inter alia*, workmen have recovered compensation; *Rees v. Thomas*, [1899] 1 Q.B. 1015; 34 Digest 293, 2440 (workman injured in trying to stop employer's runaway horses); *Hapelman v. Poole* (1908), 25 T.L.R. 155; 34 Digest 316, 2595 (workman trying to get escaped lion back into cage); *Culpeck v. Orient S.N. Co.* (1922), 15 B.W.C.C. 187; 34 Digest 293, 2445 (baker employed as such in ocean liner injured when attacked by Egyptian against whom he was trying to protect two lady passengers); *Dermody v. Higgs and Hill*, [1937] 4 All E.R. 379; Digest Supp. (labourer assisting mechanic to start engine with which latter was having difficulty). It has, however, been held that if the person whom the workman, in an emergency, endeavours to help is not a fellow workman the above exception does not apply; see *Jones v. Tarr*, [1926] 1 K.B. 25; 34 Digest 293, 2446.



The above decisions, though still relevant when considering what is covered by section 7 (1) of the 1946 Act as being an accident "arising out of and in the course of the employment", will not usually need to be referred to in future because of the express provisions of section 10 of the 1946 Act. This provides that an accident happening to an insured person in or about any premises at which he is for the time being employed for the purposes of the employer's trade or business shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be, or possibly to be, injured or imperilled, or otherwise to avert or minimise serious damage to property.

It will be observed that this new provision is wider than the exception established by the cases under the Workmen's Compensation Acts. What is meant by "emergency" is not defined. In *Menzies v. Quibban* (1900), 2 F. 732 (unskilled labourer assisting machinist in replacing belt) it was said that "emergency" meant "something which occurred unexpectedly. It does not necessarily mean an occurrence giving rise to great danger". This was approved and followed by the Court of Appeal in *Dermody v. Higgs and Hill*, [1937] 4 All E.R. 379; Digest Supp., and would appear to apply to section 10, *post*. It will, however, be observed that if an insured person is relying on section 10 of the Act it must be shown—

- (i) that the accident happened in or about premises at which he was for the time being employed for the purposes of his employer's trade or business; and
- (ii) that there was an actual or supposed emergency at those premises; and
- (iii) that the insured person was taking steps to rescue, succour or protect persons who were, or were thought to be, or possibly to be, seriously injured or imperilled; or
- (iv) that he was taking steps to avert or minimise serious damage to property.

Conditions (iii) and (iv), which are alternatives, would appear to exclude cases like *Dermody v. Higgs and Hill*, *supra*, from section 10, *post*. Indeed section 10 is not needed in such cases: it is in the real emergency cases only that it need be relied upon, and in such cases it appears to be immaterial under the section whether the persons to be rescued, succoured or protected are fellow servants, or whether the property from which serious damage is averted is the employer's property or not.

### The Basic Benefits

The essential difference so far as benefits are concerned between the new Industrial Injuries Scheme and the Workmen's Compensation Acts is that in future benefits will be related solely to the degree of disability suffered, and not to loss of earning power, which was formerly the case (see p. 3, *ante*).

In ascertaining the amount of the appropriate total benefit account is also taken of the insured person's responsibilities in regard to dependants.

There are three types of benefit provided for:—

1. Industrial injury benefit, which is referred to in the Act as "injury benefit".
2. Industrial disablement benefit, which is referred to in the Act as "disablement benefit".
3. Industrial death benefit, which is referred to in the Act as "death benefit".



These will be dealt with separately below, but in the first two cases there may be further benefits on account of wife, children, etc.: these are dealt with *post*, under the heading "Additional benefits".

**1. Injury benefit.**—An insured person is entitled to injury benefit at the rate of 45s. a week (or 7s. 6d. a day) in respect of any day on which, as a result of the injury in respect of which the benefit is claimed, he is, during a period of 156 days thereafter, excluding Sundays (called the "injury benefit period") incapable of work, beginning with the day on which the accident happened; section 11, *post*.

This general provision, which it will be observed does not discriminate between the sexes, is subject to the following qualifications:—

- (i) In determining whether the insured person is incapable of work on the day of the accident any part of the day before the accident happens is to be disregarded (section 11 (2), *post*) but no injury benefit is payable in respect of the first three days of the incapacity unless as the result of the relevant injury he is incapable of work during the injury benefit period on not less than twelve days (which need not be consecutive) (section 11 (1), proviso). Thus the day on which the accident happens counts as the first of the three waiting days, whereas under the equivalent section 10 (1) (a) of the Workmen's Compensation Act, 1925 (Willis, 260) it did not.
- (ii) "Day" means a period of 24 hours or such other period as the Minister may by regulations prescribe; section 88 (1), *post*.
- (iii) If on any day of the injury benefit period the insured person is not incapable of work he may elect to treat the injury benefit period as having come to an end by making a claim for disablement benefit (as to which see *post*) in respect of the accident; section 11 (4), proviso, *post*.
- (iv) If the person entitled to the benefit is under 18 years of age the injury benefit is reduced to 33s. 9d. a week for the period during which he is between the ages of 17 and 18, and 22s. 6d. for the period during which he is under the age of 17, unless such person is entitled to an increase of benefit in respect of a child or adult dependant; section 11 (3), proviso, *post*.

The injury benefit is thus designed to cover the initial period of incapacity, and if the incapacity continues for more than six months (counting Sundays) the benefit is changed to disablement benefit, dealt with below.

As to increases on the basic rate of injury benefit see "Additional benefits", *post*.

**2. Disablement benefit.**—This may be either an industrial disablement pension (referred to in the Act more shortly as a "disablement pension") or an industrial disablement gratuity (referred to in the Act more shortly as a "disablement gratuity").

A disablement pension is payable where the injured person (a) continues to be incapable of work after the injury benefit period is over; and (b) where, after the incapacity for work ceases (either before or after the end of that period) he continues to suffer from loss of physical or mental faculty which (i) is likely to be permanent, or (ii) is substantial in that the extent of the resulting disablement is not less than 20 per cent.; section 12 (1) and (7), *post*.

A disablement gratuity is payable where an injury causes only a minor disablement amounting to at least 1 per cent. but not amounting to 20 per cent. In these cases of minor injuries there is a final lump sum settlement of not more than £150, which may be payable by instalments; see section 12 (1) and (6), *post*. A scale of amounts is to be prescribed by regulations,



which are to fix the sum by reference to the length of the period of disablement and the degree of disablement, but the scale must be the same for all persons, regardless of sex, except that where the insured person is below 18 years of age at the beginning of the period the amount may be reduced to not less than three quarters of the full rate for a person between 17 and 18 years old and half the full rate for a person under 17 years old.

If the disablement amounts to less than 1 per cent. no disablement benefit at all is payable; section 12 (1), proviso, *post*.

Disablement benefit, therefore, is payable only in respect of "loss of physical or mental faculty", and "loss of physical faculty" includes disfigurement, whether or not accompanied by any actual loss of faculty (section 7 (2), *post*) and the amount of the benefit, whether it is pension or gratuity, depends on the percentage of disability incurred by the claimant as a result of the relevant loss of faculty. The method of assessment will be dealt with in Part III of this Introduction, *post*. Where the disablement is 100 per cent., the basic rate of pension is 45s. a week. But there may be allowances in addition, as to which see note on "Additional benefits", *post*. Moreover, where an insured person can show that by reason of his loss of faculty he is incapable and likely to remain permanently incapable of following his regular occupation, and is incapable of following employment of an equivalent standard which is suitable in his case, the weekly rate of disablement pension is to be increased by 11s. 3d., subject to a maximum pension of 45s. not including increases in respect of constant attention or children or adult dependants; see section 14, *post*.

"Disfigurement" was substituted for "loss of personableness" in the House of Lords, as being a more suitable and equally comprehensive word. It was the first occasion on which the expression had been proposed to be used in a statute, nor is there any mention of it in the existing pension schemes which most nearly resemble that established by the present Act, namely the navy, army and air force pension schemes under which pensions may be awarded in respect of the disablement of a member of the forces due to war service, disablement being there defined as "physical or mental injury or damage or loss of physical or mental capacity"; see S.R. & O. 1946 No. 812 (navy); Cmd. 6799 (army) and H. of C. Paper No. 151 of 1946 (air force). It may be pointed out that under the Workmen's Compensation Act, 1925, section 9 (Willis, 260) compensation was given where "incapacity for work results from the injury", so that precisely the same point did not arise: it was nevertheless held that if the incapacity for work arose from loss of will power due to the effects of the accident there was a right to compensation: see Willis, 269-271.

**3. Death benefit.**—Where the death of the insured person results from the injury the persons who may benefit are as follows:—

(i) The deceased's widow, if at his death she either was residing with him or would but for the relevant accident have been receiving or entitled to receive from him periodical payments for her maintenance of not less than the prescribed amount, will be entitled to the death benefit; section 19 (1), *post*.

The widow gets a pension which continues until she dies or remarries, in which latter case she gets a marriage gratuity equal to 52 times the weekly rate of pension to which she is entitled when she remarries; section 19 (2). The weekly pension rate is 30s. in all cases where the widow is fifty years of age or over or where the widow, whatever her age, was either permanently incapable of self-support or is entitled to an allowance under section 21 of the Act in respect of a child of the deceased's family; section 19 (3), *post*. In any other case, i.e., a widow under fifty years of age who is not incapable of self support, and who has no young children, the pension is 20s. a week; *ibid*. If the widow cohabits with a man as his wife she will be treated as having remarried; section 88 (3), *post*.



The above is subject to two qualifications ; (i) if the deceased and his widow did not reside together at his death (as to which see section 88 (4), *post*) and he did not wholly maintain her, the weekly rate of pension will not exceed what she was receiving or was entitled to receive or would but for the accident have been receiving or was entitled to receive for her maintenance ; section 19 (3), proviso, *post* ; (ii) regulations may prescribe a higher pension rate, not exceeding 36s., for the first 13 weeks after the deceased's death ; section 19 (4).

(ii) The widower of the deceased, if he was at her death wholly or mainly maintained by her, or would but for the accident have been so maintained, and was permanently incapable of self-support, is entitled to a pension at the rate of 30s. a week ; section 20, *post*.

(iii) Any person whose family includes a child or children of the deceased in cases where the deceased at his death had a family which included that child or children, is entitled (subject to the provisions of Schedule IV to the Act) in respect of the child, or elder or eldest of the children, to an allowance at the weekly rate of 7s. 6d. a week ; section 21 (1), *post*. "Child" means a person who by section 2 of the Family Allowances Act, 1945 (32 Statutes Supp. 75) is to be treated as a child for the purposes of that Act (section 88 (2) (a), *post*) (in general, where the child is under the upper limit of the compulsory school age), and it is also necessary that the child or children in question should, at the time of the deceased's death, have been treated as constituting a family within the meaning of section 3 of the Family Allowances Act, 1945 (32 Statutes Supp. 76) ; see section 88 (2) (c), *post*. In cases, however, where the deceased is a man, a legitimate posthumous child is to be treated as having been a child of the deceased's family at his death, and so too with an illegitimate child of the deceased and any woman residing with him at his death, being a son or daughter who then was a child of her family and was being, or would but for the relevant accident have been, wholly or mainly maintained by him ; section 21 (2), *post*.

It may be noted that the present Act makes no provision for second or subsequent children : this is because these are already provided for by the Family Allowances Act, 1945 ; 32 Statutes Supp. 75 *et seq*.

Any question whether any person is a child, or is under the upper limit of the compulsory school age, or whether a person has a family including a child or children, or is a child of some other person's family, is to be determined in like manner as under section 5 of the Family Allowances Act, 1945 (32 Statutes Supp. 77) ; see section 36 (1) (b), *post*. Under this provision the Minister determines the matter in the first place, but any person dissatisfied may have the matter referred to a referee, whose decision is final except that the referee may, and if directed by the Court must, state any question of law which arises, or his decision, in the form of a special case for the decision of the Court. Decisions on these questions given for the purposes of the one Act have effect also for the purposes of the other Act ; section 36 (4), *post*.

(iv) A parent, including a step-parent, and, in a case where the deceased was illegitimate, his mother, is entitled to benefit if the parent is at the deceased's death being to a substantial extent maintained by him, or would but for the accident have been so maintained. If the parent was, or would have been, wholly or mainly maintained, the benefit takes the form of a pension of 20s. a week until death or (in the case of a woman) remarriage if only one parent is entitled, or 15s. a week each where both parents are living together and entitled. If the extent of maintenance, though substantial, falls short of being "wholly or mainly" the benefit is a gratuity of £52, subject to the provisions of the Fourth Schedule, *post* ; section 22, *post*.

(v) Any such relative of the deceased as may be prescribed is entitled to death benefit if at the deceased's death he is (a) being wholly or mainly



maintained by the deceased or would but for the relevant accident have been so maintained, or (b) was being to a substantial extent maintained by him, or would have been but for the accident, and (i) in the case of a man, was permanently incapable of self-support, (ii) in the case of a woman was herself permanently incapable of self-support or was living with her husband who was incapable of self-support; section 23 (1), *post*.

"Relative" does not include a husband or wife, or a parent within (iv), *supra*, or any person who is a child, but includes a person who is only a relative by marriage or adoption, and a person who would be a relative if some person born illegitimate had been born legitimate; section 23 (5), *post*.

If the relative entitled under the regulations to death benefit was, or would have been, wholly or mainly maintained by the deceased, and was, or (in the case of a married woman living with her husband) she or her husband was, permanently incapable of self-support at the deceased's death, the benefit is a pension at the weekly rate of 20s., ceasing on death or (in the case of a woman) remarriage or separation from an incapacitated husband, but this is subject to the provisions of the Fourth Schedule to the Act, *post*; section 23 (2) and (4), *post*.

If the relative was, or her husband was, permanently incapable of self-support but was not wholly or mainly maintained, nor would have been but for the accident, by the deceased, the death benefit is a gratuity of £52, payable, if regulations provide, by instalments; section 23 (3) and (4), *post*.

If the relative was, or would have been, wholly or mainly maintained by the deceased, but there was no incapacity for self-support, the death benefit is a weekly allowance of 86s. a week for 13 weeks from the deceased's death which ceases if the beneficiary dies before the expiration of that period; section 23 (3) and (4), *post*.

These benefits are subject to the provisions of the Fourth Schedule, *post*, relating to cases where two or more persons are entitled, and where persons are also entitled under some other section. Not more than £52 is to be paid in relatives' gratuities in respect of the same death unless no person is entitled to a relative's pension or some relative is entitled to a gratuity in lieu of a pension. In no case is more than £104 to be paid; Fourth Schedule, paragraph 5, *post*. Section 23 (6), *post*, disentitles relatives who were children at the deceased's death from receiving benefit (a) until they cease to be children or (b) unless they were at the death and are on ceasing to be children permanently incapable of self-support, and any pension begins only from the date when they cease to be children.

Any question how the limitations under the Fourth Schedule are to be applied in any case is to be determined by the Minister, whose decision is to be final; section 36 (1) (a) (vi), *post*.

(vi) Where at the time of the accident, and throughout the period between then and the death, a woman was residing with the deceased and had the care of a child or children of the deceased's family (as defined in section 88 (2) of the Act, *post*), and was wholly or mainly maintained by him or would have been but for the accident, she is entitled to death benefit, subject to the provisions of Schedule IV to the Act; section 24 (1), *post*. The benefit is an allowance of 20s. a week so long as the woman has the care of the child, or until she marries, or remarries; section 24 (3), *post*. In cases where the deceased is a man, and the child was the illegitimate child of him and the woman, the child will be treated as having been a child of the deceased's family during any part of the period between the accident and the death during which the child was a member of the woman's family, and was wholly or mainly maintained by the deceased; section 24 (2), *post*.

Any question how the limitations under Schedule IV to the Act on the benefit payable in respect of any death are to be applied in the circumstances of any case is to be determined by the Minister, whose decision is to be final; section 36 (1) (a) (vi), *post*.



### Additional benefits

In addition to the basic benefits at the rates described above, there may be certain additional benefits payable in non-fatal cases.

1. **Unemployability supplement.**—If, as a result of the relevant loss of faculty the insured person is incapable of work, and likely to remain permanently so incapable, he is entitled to have added to his pension an "unemployability supplement" of 20s. a week for such period as may be determined at the time it is granted, and this may be renewed from time to time. In the case of a person under 18 years of age the rate is 15s. for the period during which he is between the age of 17 and 18 and 10s. for the period during which he is under the age of 17. A person may be treated as being incapable of work and likely to remain permanently incapable of work notwithstanding that the loss of faculty is not such as to prevent him from being capable of work if it is likely to prevent his earnings exceeding £52 a year; section 13, *post*. Any question whether an unemployability supplement is to be granted or renewed is to be determined by the insurance officer, local appeal tribunal or Commissioner; section 36 (2), *post*.

2. **Special hardship.**—If as a result of the relevant loss of faculty the beneficiary (a) is incapable and likely to remain incapable of following his regular occupation and (b) is incapable of following employment of an equivalent standard which is suitable in his case, he is entitled to have his disablement pension increased by 11s. 3d. per week for any period for which he is not already entitled to an unemployability supplement and subject to a maximum rate of pension, apart from increases in respect of constant attendance or child or adult dependants, of 45s.; section 14 (1) and (3), *post*. A regular occupation is not to be taken to include any subsidiary occupation and employment of an equivalent standard is not to be taken to include employment other than insurable employment. Reasonable prospects of advancement are to be considered in assessing the standard of remuneration in any employment; section 14 (2), *post*. This increase will be payable for such period as may be determined and may be renewed from time to time, and regulations may apply the provisions of this section to a disablement gratuity and may provide for replacing it by a pension; section 14 (4) and (5), *post*.

3. **Constant attendance.**—Except where a person in receipt of a disablement pension is receiving free of charge medical attendance as an in-patient at a hospital or similar institution, including a workhouse (section 88 (1), *post*), if as a result of loss of faculty he requires constant attendance, he is entitled to have his pension increased by such sum, not exceeding 20s., or, in cases of exceptionally severe disablement, 40s., as may be determined by regulations, and this increase will be payable for such period as may be determined, and may be renewed from time to time; section 15, *post*.

Any question whether an increase of disablement pension in respect of the need of constant attendance is to be granted or renewed and, if so, for what period and of what amount, is to be determined by the Minister, whose decision is final; section 36 (1) (a) (v), *post*.

4. **Hospital treatment.**—Where a person entitled to a disablement pension assessed at less than 100 per cent. enters a hospital or similar institution for the purpose of receiving approved hospital treatment, he is to be treated during the period of such treatment as entitled to a full disablement pension; section 16, *post*.

5. **Child dependants.**—For any period during which—(i) a person in receipt of injury benefit has a family which includes a child or children; or (ii) a person in receipt of a disablement pension has such a family and is either entitled to an unemployability supplement or is receiving approved hospital treatment, the weekly rate of injury benefit or disablement pension



is increased by 7s. 6d. per week in respect of that child or the elder or eldest of these children; section 17 (1), *post*. If the insured person is a man, a child of the family of any woman residing with him is to be treated for this purpose as a child of his family if it is their illegitimate son or daughter, or was born not less than six months before the date of the accident and wholly or mainly maintained by the man throughout the period of six months ending on the date of the accident; section 17 (2), *post*. As to the meaning of "child" and "family" see sections 2 and 3 of the Family Allowances Act, 1945 (32 Statutes Supp. 75), applied by section 88 (2), *post*. The determination of any questions as to who is a child, etc., is to be decided by the Minister under section 5 of the Family Allowances Act, 1945 (32 Statutes Supp. 77), and his decision is subject to reference to a referee by any person dissatisfied. The referee's decision is final, except that the referee may, and if so directed by the Court must, state any question of law which arises in the course of the reference, or his decision, in the form of a special case for the decision of the Court; see section 36 (1) (b), *post*.

**6. Adult dependants.**—In the case of a man and wife living together where the one spouse resides with and is wholly maintained by the other, provided that if it is the husband who is maintained he is incapable of self-support, the injury benefit, or the disablement pension if the beneficiary is entitled to unemployability supplement or is receiving approved hospital treatment, is increased by 16s. a week; section 18 (1) and (2), *post*. Regulations may provide that this increase shall not be payable where the husband or wife's earnings exceed a prescribed amount; section 18 (3), *post*.

A similar increase is payable (i) if the beneficiary has residing with him, and wholly or mainly maintained by him, any such relative as may be prescribed (excluding children, but including a person who is a relative by marriage or adoption, and a person who would be a relative if some person born illegitimate had been born legitimate), section 18 (1) (c) and (5); (ii) if a female person (not being a child) has the care of a child or children of the beneficiary's family (including those treated as such by section 17 (2) of the Act) being a person in relation to whom such further conditions are prescribed as may be fulfilled; section 18 (1) (d), *post*.

Not more than one allowance under this section is payable; section 18 (4), *post*.

**Payment of benefit in certain cases not insured against. Illegal employment.**—Where, by reason of a contravention or non-compliance with some provision contained in or having effect under any enactment passed for the protection of employed persons, or of any class of employed persons, the contract purporting to govern the employment was void, or the employed person was not lawfully employed therein at the time when or in the place where the accident happened (or the disease or injury was contracted or received) the Minister may direct that the employment shall nevertheless be treated as having been insurable employment (section 81, *post*) so that the workman will be able to claim benefits under the Act.

**Past cases.**—In general the Act applies only to accidents happening or diseases contracted after the appointed day, but regulations may provide for conferring on persons who are, after the appointed day, entitled to weekly payments under the Workmen's Compensation Acts, 1897–1945, the right to receive the unemployability supplement of 20s. a week in cases where they would have received this had they been injured after the appointed day; section 82 (1), *post*. Such payments will be made out of the Industrial Injuries Fund. By the same section regulations may also provide for persons who are entitled to weekly payments under the Workmen's Compensation Acts (or under any contracting-out scheme under those Acts) and who, as a result of the injury or disease, require constant attendance. Such persons are to be entitled to an increased pension for



constant attendance under the Act on the footing of a 100 per cent. assessment.

### PART III.—PROCEDURE FOR OBTAINING BENEFITS, AND THE DETERMINATION OF QUESTIONS AND CLAIMS RELATING THERETO

**Insurance Officers.**—The general administration of the Act is under the control of the Minister of National Insurance, who was appointed pursuant to the Ministry of National Insurance Act, 1944 (27 Statutes Supp. 23). For the purposes of the Act he is, subject to Treasury consent as to number, to appoint officers called "Insurance Officers" to act for such areas as he directs; section 44, *post*. The intention is that there shall be local offices of the Ministry in all places of any size, and these will be in charge of a local Insurance Officer who will act in regard to all claims in respect of that area. With the exception of (i) matters which are by section 36 (1) (a), *post*, reserved for the Minister's decision (these have all been referred to in their appropriate place earlier); and (ii) the matters relating to children, which, under section 36 (1) (b) of the Act, *post*, as noted earlier, have to be determined under the Family Allowances Act, 1945 (32 Statutes Supp. 75); and (iii) matters relating to loss of faculty which, under section 36 (1) (c) of the Act, *post*, are to be dealt with by a Medical Board or Medical Appeal Tribunal (see *post*, p. 28), all claims for benefit, and any question arising in connection with a claim for or award of benefit are to be determined by the Insurance Officer, subject to appeal as provided by the Act to a Local Appeal Tribunal and the Industrial Injuries Commissioner (hereinafter referred to as "the Commissioner").

The questions which he does not determine, referred to above, are called "special questions", and those relating to loss of faculty are called "disablement questions"; section 36 (5), *post*.

The Insurance Officer is thus the person who handles all matters in their first stages, for the excepted matters referred to above cannot arise until a claim has been made and has been investigated by him.

As to the remuneration of Insurance Officers, see section 53 (2) (a), *post*.

**Notification of accidents.**—Under section 25 (1) (a) of the Act, *post*, regulations may require notice of any accident in respect of which benefit may be payable to be given to the employer or other prescribed person within a prescribed time by the insured person, or if he is killed, by some other person. Regulations may also require employers to make reports to the Insurance Officer or other prescribed person of accidents in respect of which benefit may be payable, and to take such other steps as may be prescribed to facilitate the giving of notice of accidents; section 26, *post*.

At the time of going to press no such regulations have been made, but the object of these provisions is similar to that of section 14 of the Workmen's Compensation Act, 1925 (Willis, 414), under which the giving of notice of the accident as soon as practicable was, in general, a condition precedent to the making of a subsequent claim.

**The making of claims.**—All claims for benefit are to be made forthwith after the accident to one of the Insurance Officers, and all questions (other than special questions as defined by section 36 (5), *post*) arising in connection with any such claim or with an award of benefit are to be submitted to him in the first instance; section 45 (1), *post*. The Insurance Officer must forthwith take into consideration any claim or question so submitted to him for examination; section 45 (2), *post*. It should be noted that by section 52 (1), *post*, regulations may be made providing for the making of interim payments during the period intervening between the making of a claim and its determination.



Where on consideration of a claim or question the Insurance Officer is of opinion that no special question (as to which, see note on p. 26, *ante*) arises, and is satisfied that the claim ought to be allowed in whole or in part, or that the question ought to be determined in favour of the claimant or beneficiary, he may allow the claim or determine the question accordingly. If not so satisfied, he may either refer the claim or question to the Local Appeal Tribunal (as to which, see *post*) for their decision, or may himself determine that an award cannot be made or determine the question adversely to the claimant or beneficiary. If he does refer the matter to the Local Appeal Tribunal he is to do so, so far as practicable, within 14 days from the date on which it was submitted to him for examination; section 45 (3), *post*. It should be noted that by section 51 (1) (e) of the Act regulations may be made for prescribing the evidence to be required in connection with a claim.

In the majority of cases under the Act the first claim will be for injury benefit, and by section 25 (1) (b) of the Act, *post*, regulations may be made for requiring claims to be made within a prescribed time and in a prescribed manner, and for requiring claimants to provide any information required for the determination of the claim or of any question arising in connection therewith. Claimants may also, as provided by regulations, be required to submit themselves to medical examination and treatment; section 25 (2) and (3), *post*. Employers may also, as provided by regulations, be required to furnish information and to take other steps to facilitate the determination of claims and of questions arising in connection therewith; section 26, *post*.

**Reference of special questions to Minister.**—If on consideration of a claim or question the Insurance Officer is of opinion that a "special question" (i.e., a matter reserved for the decision of the Minister, or as provided by the Family Allowances Act, 1945, or by a Medical Board; see section 36 (5), *post*) arises, the Insurance Officer cannot decide it himself, but must refer it for decision as required by sections 36 and 37 of the Act, *post*, and must deal with any other question as if the special question had not arisen; regulations are to be made dealing with such references; see section 48, *post*.

These special questions have all been referred to earlier, except disablement questions, which are dealt with in the next note.

Under the National Health Insurance Acts it was the practice to issue notes of decisions given by the Minister: see Volume of Memoranda of Decisions given by Minister of Health as to Liability to Insurance (Memo. 151, September, 1931) and the XIX Supplements thereto issued from time to time. Presumably decisions given under the new Act will be published in a similar form.

On reference of a question of law to the Minister he may, if he thinks fit, in the four cases referred to in section 37 (1) of the Act (whether a person is in insurable employment; whether he or his employer is exempted from paying contributions; who is liable to pay as being the employer; what is the appropriate rate of contributions) refer the matter to the High Court for decision, and if he does not do so, but decides the matter himself, any person aggrieved by his decision may appeal from that decision to the High Court; section 37 (1), *post*. Rules of Court are to be made for regulating references and appeals, and these rules will limit the time for appeals; section 37 (2), *post*. It is the intention that such appeals should be heard by a single nominated judge, and not a divisional court (see section 37 (4), *post*) and the Minister is entitled to appear and be heard on any reference or appeal; section 37 (3), *post*.

The decision of the High Court on a reference or appeal is final (section 37 (5), *post*) but the Minister himself may, on new facts being brought to his notice, review a decision which he has previously given on such matter,



but cannot do so while an appeal against his decision is pending, nor until the time for appealing has expired; section 37 (6), *post*. The Court may order the Minister to pay the costs of any other person, whether or not the decision is in his favour and whether or not the Minister appears on the reference or appeal; section 37 (5), *post*.

**Medical Boards and Medical Appeal Tribunals.**—By section 36 (1) (c) of the Act, *post*, if any of the three following questions, called "disablement questions", arises on a claim being made, the Insurance Officer must (subject to the exception mentioned below) in accordance with regulations which are to be made, refer it to a Medical Board for decision (see section 48 (1), *post*). These disablement questions are—

- (i) whether the accident in respect of which the benefit is claimed or payable has resulted in a loss of faculty;
- (ii) whether a loss of faculty is likely to be permanent;
- (iii) at what degree the extent of disablement resulting from a loss of faculty is to be assessed, and what period is to be taken into account by the assessment.

The exception referred to above is that, in accordance with regulations, disablement questions may with the claimant's consent be referred to a single registered medical practitioner appointed by the Minister, instead of to a Medical Board, but the period to be taken into account by any such assessment must not be more than three months: the decision on such a reference takes effect (for the purposes of appeal and review, etc.), as if it were a decision of a Medical Board; section 41, *post*.

Medical Boards are appointed by the Minister and consist of two or more registered medical practitioners, one of whom is appointed to be chairman. The Minister may arrange with any other Government Department that any Medical Board recognized by it and consisting of two or more registered medical practitioners shall be a Medical Board for the purposes of the present Act. Apart from the above statutory provisions, the constitution of Medical Boards is to be determined by Regulations; section 38, *post*.

The case of any claimant for disablement benefit, subject to the exception noted above (see section 7 (1) (b) and section 12, *post*) must be referred by the Insurance Officer to a Medical Board, and that Board may make a provisional assessment (in which case the matter must be referred to the Board again not later than the end of the period taken into account by the provisional assessment) or it may make a final assessment; section 39 (1), *post*.

The principles that are to be applied in assessing the extent of the disablement of the claimant as a result of the loss of faculty caused by the injury in respect of which the claim is made are laid down in general terms by subsections (2) to (5) of section 12, *post*, but power is given by that section to make regulations for further defining the principles on which the extent of the disablement is to be assessed, and these may direct that a prescribed loss of faculty shall be treated as resulting in a prescribed degree of disablement. Presumably tables will be annexed to the regulations made similar to those in existence in regard to war pensions; see e.g., Schedule I to S.R. & O. 1944, No. 99 (navy pensions).

Subject to what is said below, no appeal lies against the Board's decision, so far as a provisional assessment is concerned, before the expiration of two years from the first reference of the case to the Board, nor where the period taken into account falls wholly within the said two years, but otherwise (i.e., in respect of all final assessments, and in respect of provisional assessments falling outside the above provision) any claimant who is dissatisfied with the decision of a Medical Board may appeal, within the time and in the manner prescribed by Regulations, to a Medical Appeal Tribunal;



section 39 (2), *post*. Moreover the Minister himself may, if he is of opinion that any decision of a Medical Board ought to be considered by a Medical Appeal Tribunal, notify the Insurance Officer of this, and the Insurance Officer must then refer the case to a Medical Appeal Tribunal, which may confirm, reverse or vary the decision in whole or in part as on an appeal; section 39 (3), *post*. A Medical Appeal Tribunal consists of a chairman and two registered medical practitioners appointed by the Ministers; section 38 (2), *post*.

Any decision, either of a Medical Board or a Medical Appeal Tribunal may be reviewed at any time by a Medical Board if satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the claimant or any other person of any material fact (section 40 (1), *post*). Any assessment of the extent of the disablement may be similarly reviewed if the Medical Board is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury, though this must only be done where substantial injustice would be done if no revision took place (section 40 (2), *post*), and except with leave of a Medical Appeal Tribunal no assessment must be so revised on any application made less than five years (or six months in the case of a provisional assessment), after the original assessment, and on such a review the period to be taken into account by any revised assessment must not include any period before the date of the application for review; section 40 (3), *post*.

**Appeals from decisions of Insurance Officer.**—In cases where (i) a claimant or person entitled to a benefit under the Act (called a beneficiary) is dissatisfied with the Insurance Officer's decision on any matter which the Insurance Officer has to decide; or (ii) a person's right or benefit is or may be, under the Fourth Schedule to the Act, affected by the Insurance Officer's decision in favour of the claimant or beneficiary, he may appeal within the prescribed time and in the prescribed manner to a Local Appeal Tribunal; section 46 (1), *post*.

A Local Appeal Tribunal is to consist of one or more representatives of employers and an equal number of insured persons' representatives, and a chairman appointed by the Minister. The representative members are to be chosen (in such way as may be prescribed) from panels constituted by the Minister for such areas as the Minister may think fit, and regulations may make provision for one or more medical practitioners to sit with the tribunal, either as additional members or as assessors; section 43, *post*. The hearing is to be in public except in so far as the tribunal for special reasons otherwise directs; section 51 (3), *post*.

Leave of the chairman of the Local Appeal Tribunal is necessary before an appeal to the tribunal can be brought in one case only, viz., where a special question has already arisen and been determined, and the Insurance Officer certifies that the decision on that question is the sole ground of his decision; section 46 (1), proviso, *post*.

**Appeals from decisions of Local Appeal Tribunals.**—Local Appeal Tribunals must record their decisions in writing, whether on appeals or on references from the Insurance Officer, and must include a statement of their findings on questions of fact material to the decision; section 46 (2), *post*.

From the decision of the Local Appeal Tribunal an appeal lies, subject to certain conditions, to a newly created officer called the Industrial Injuries Commissioner (referred to hereinafter as "the Commissioner") who is appointed by His Majesty, who may also appoint such number of deputy Commissioners as he thinks fit, the Commissioner and deputy Commissioners being barristers (or advocates in Scotland) of not less than ten years' standing (section 42 (1), *post*) and references to the Commissioner, unless the context otherwise requires, include a reference to a deputy Commissioner. Regula-



tions may be made for enabling any case (i) which involves a question of law of special difficulty to be dealt with by a tribunal consisting of three deputy Commissioners, or two of them and the Commissioner ; or (ii) which involves a question of fact of special difficulty to be dealt with wholly or partly with the assistance of an assessor or assessors specially qualified ; or (iii) which involves questions both of law and of fact to be dealt with by such a tribunal of three as is mentioned above together with assessors ; section 42 (2), *post*.

With leave of the Local Appeal Tribunal or of the Commissioner there may be an appeal to the Commissioner from any decision of the tribunal at the instance of the following persons, viz. : (i) the Insurance Officer ; (ii) the claimant or beneficiary, or a person whose right or benefit is or may be, under Schedule IV, affected by the decision appealed against ; and (iii) an association of employed persons of which the claimant or the beneficiary or (in fatal cases) the deceased was a member at the time of the relevant accident ; section 47 (1).

Such leave must be granted where it appears that there is a principle of importance involved in the case, or where there are any other special circumstances by reason of which leave to appeal ought to be given ; section 47 (1) (b) and (4). Where it is the Local Appeal Tribunal that grants leave, it must record in writing a statement of the grounds on which leave to appeal is granted ; section 47 (5).

In all cases the appeal must be brought within three months from the date of the decision of the Local Appeal Tribunal, or such further period as may be prescribed by regulations, or as the Commissioner may in any case for special reasons allow ; section 47 (2). The hearing is in public unless the Commissioner for special reasons otherwise directs ; section 51 (3), *post*.

**Declaration that accident is an industrial accident.**—For the purposes of section 49, *post*, and of any subsequent sections of the Act, an accident whereby a person suffers personal injury is deemed, in relation to him, to be an industrial accident if—

- (i) it arises out of and in the course of his employment ; and
- (ii) that employment is insurable employment ; and
- (iii) payment of benefit is not precluded because the accident happened while he was outside Great Britain ; section 49 (5), *post*.

Where in connection with any claim for benefit it is determined that the accident was or was not an industrial accident in this sense, an express declaration of that fact must be made and recorded ; section 49 (1), *post*.

Subject to what is said below, a claimant has a right to have such a declaration made notwithstanding that his claim is disallowed on other grounds (section 49 (1), *post*), and any person suffering personal injury by accident is also entitled to have such a declaration made when he claims that the accident was an industrial accident, notwithstanding that no claim for benefit has been made ; section 49 (2), *post*.

The only case in which the Insurance Officer may refuse to make such a declaration is where he is satisfied that it is unlikely that it will be necessary to determine the question for the purposes of any claim for benefit. In the event of such a refusal an appeal lies to the Local Appeal Tribunal and to the Commissioner, both of which tribunals must, in appropriate cases, make the declaration ; section 49 (3), *post*.

Subject to the provisions relating to appeals and review, a declaration that an accident is an industrial accident is conclusive for the purposes of any claim for benefit in respect of that accident, whether or not the claimant is the person at whose instance the declaration was made ; section 49 (4), *post*. Thus, for example, if an injured workman obtained a declaration, that would be conclusive not only for the purposes of his claim to injury benefit, but, if he subsequently died as a result of the accident, for the purposes of claims by his dependants.



**Review of decisions.**—Decisions of an Insurance Officer, Local Appeal Tribunal, or the Commissioner, may be reviewed by the Insurance Officer (or by a Local Appeal Tribunal on a reference from an Insurance Officer) in three cases :—

- (i) where he is satisfied by fresh evidence that the decision was given in ignorance of, or was based on a mistake as to, some material fact ; or
- (ii) there has been any relevant change of circumstances since the decision was given ; or
- (iii) the decision was based on the decision of a special question (see p. 26, *ante*) and the decision of the special question is revised ; section 50 (1).

This is subject to the following provisos, viz., (a) a decision that an accident was not an industrial accident is not subject to review at all ; (b) a decision that an accident was an industrial accident is only subject to review where the Insurance Officer or Local Appeal Tribunal is or are satisfied by fresh evidence that the decision was given in consequence of any wilful non-disclosure or misrepresentation of a material fact.

It would appear that "fresh evidence" as used above merely means evidence which was not in fact before the Insurance Officer or other tribunal when he or it made the decision in question, and that the words should not be construed as meaning only evidence which has been newly discovered, and which could not have been made available for the purposes of the decision in question.

The review of decisions under section 50, dealt with in the present note, must be distinguished from appeals. An appeal is brought on the ground that the decision appealed is, on the facts as then disclosed, wrong, whereas the grounds for a review are always that something has been discovered, or has happened, since the original decision. It may also be noted that a decision given on review (including a refusal to review) is itself subject to appeal as if it were an original decision ; section 50 (2), *post*.

Where it appears to the Minister that a question has arisen whether an award ought to be reviewed, he may direct that payment of the benefit shall be suspended in whole or in part until that question has been determined ; section 32 (3) (b), *post*.

**General provisions as to procedure.**—The more detailed rules of procedure and evidence in regard to proceedings before the Commissioner, Local Appeal Tribunals, Medical Appeal Tribunals, Medical Boards or a single practitioner acting in place of a Medical Board (referred to collectively in the Act as "insurance tribunals" ; section 51 (4), *post*) are left to be prescribed by regulations to be made under the Act ; see section 51, *post*. These regulations may make provision as to the representation of one person, at any hearing of a case, by another person, whether having professional qualifications or not ; section 51 (3), *post*.

The nearest analogy is in regard to war pensions, and it may be noted that by rule 11 (1) of the Pensions Appeal Tribunals (England and Wales) Rules, 1943, S.R. & O. 1943. No. 1757/L.39 (Emergency Service [31]) an appellant may conduct his own case, or may be represented by any person (whether holding any legal or other qualification or being a member of any War Pensions Committee, Association of Ex-Servicemen, Trade Union, or other body or not) whom he may appoint to assist him for the purpose. On the other hand, under regulations made under section 4 of the Unemployment Insurance Act, 1935 (28 Halsbury's Statutes 525) in proceedings before a court of referees under that Act a claimant might be represented at the sitting of the court by any person authorized by him, other than counsel or solicitor (see Regulation 7 (1) (b) of S.R. & O. 1936. No. 334) and there are many recent examples of the withholding of the right of audience to counsel and solicitor.



It should be noted that the Arbitration Acts, 1889 to 1934, do not apply to proceedings under the Act unless they are applied by regulations; section 51 (4), *post*.

## PART IV.—THE PAYMENT OF BENEFITS AND CONDITIONS ATTACHING THERETO

**How and when benefit will be paid.**—Regulations are to be made as to the time and manner of payment of benefits and such regulations made by the Minister and the Postmaster-General may provide for payment through the Post Office; section 27 (1), *post*. It should be noted that by section 64 and Schedule VI, *post*, no stamp duty is payable upon a draft or order for the payment of benefit, or upon a receipt given in respect thereof, or upon the other documents specified in Schedule VI.

Normally no benefits will be payable until an Insurance Officer has decided a claim in favour of an insured person, but provision may be made by regulations for interim payments being made after an application but before the determination of the claim; section 52, *post*.

See also section 29 (adjustment of benefits where there are successive accidents); section 30 (provisions in regard to overlapping benefits); section 31 (adjustment of arrears of benefit in respect of outdoor relief, etc.); section 52 (arrears and repayments).

**Nature of benefit payments, conditions of receipt thereof, and disqualifications.**—The whole purpose of the Act is to ensure that wholly or partly disabled persons actually receive a payment corresponding to their needs: hence the abolition of lump sum payments (other than gratuities on remarriage of a widow, or to relatives, etc.) except in minor cases of less than 20 per cent. disability. Benefits are therefore made inalienable, and any assignment of, or charge on, any benefit, and every agreement to assign or charge any benefit, is void, and on the bankruptcy of a beneficiary a benefit does not enure for the benefit of the creditors or pass to the trustee; section 28 (1), *post*.

In calculating the means of a beneficiary for the purposes of section 5 of the Debtors Act, 1869 (power of committal for non-payment of debts on proof of means to pay: 1 Halsbury's Statutes 575) no account is to be taken of any increase of injury benefit or disablement benefit in respect of a child, or of any death benefit; section 28 (2), *post*. There is a similar provision in section 10 (2) of the Family Allowances Act, 1945 (32 Statutes Supp. 80).

Under section 25 (4) of the Act, *post*, it is the duty of any person claiming or receiving benefit not to behave in any manner calculated to retard his recovery. Failure to do so without reasonable cause results in a forfeiture of the right to receive any injury benefit for such period as may be prescribed; section 32 (2), *post*. Regulations may also provide for requiring claimants and beneficiaries to submit to medical examination and to appropriate medical treatment and to attend vocational training or industrial rehabilitation courses (section 25 (2), *post*) and such regulations may provide for forfeiture of benefit for failure without reasonable cause to comply with any of such requirements, and may also provide for forfeiture for obstruction or other misconduct, and for suspending proceedings on the claim; section 32 (2), *post*.

Where it appears to the Minister that a question has arisen whether the conditions for receipt of benefit are fulfilled, he may direct that payment of the benefit be suspended in whole or in part until that question has been determined; section 32 (3) (a), *post*; but not for more than six weeks if the forfeiture is for failure to comply with section 25 (4), *post*, or with the regulations as to medical examination or treatment or for obstruction or misconduct in connection therewith.

Except where regulations otherwise provide a person is disqualified for



receiving benefit, and no increase is payable in respect of any person as the beneficiary's wife or husband, for any period during which that person (i) is absent from Great Britain ; or (ii) is undergoing penal servitude, imprisonment or detention in legal custody ; and regulations may provide for the suspension of payment to or in respect of any such person, during any such period, of benefit which is excepted from these provisions or payable otherwise than in respect of that period ; section 32 (1), *post*.

As to Regulations providing for the disregard of disqualifications, etc., under sections 29 to 32, *post*, see section 33, *post*.

## PART V.—CENTRAL ADMINISTRATION AND FINANCE

**The Minister and the Industrial Injuries Advisory Council.**—The Minister of National Insurance is the person responsible for the administration of the Act and is in control of and manages the Industrial Injuries Fund, as to which see Part II of this Introduction, *ante*. The day to day local work will be carried out by the Insurance Officers, whose functions have already been described, at local offices, while the executive headquarters of the Ministry are at Newcastle-upon-Tyne, but the Minister himself will be in London with a small central headquarters staff.

The Act also provides that an Industrial Injuries Advisory Council shall be constituted, and this is to consist of a chairman appointed by the Minister and such number of other members, also appointed by the Minister, as he may determine, but there must be equal representation of employers and insured persons, and the representative members must only be appointed after consultation with such organizations as the Minister thinks fit ; section 61 (1), *post*. This Council has no power to take the initiative in tendering advice, but the Minister is under the obligation, where he proposes to make regulations under the Act (unless by reason of urgency it is inexpedient to do so) to refer the proposals, in the form of draft regulations or otherwise, to the Council for consideration and advice.

He may also from time to time refer such questions relating to the Act as he thinks fit to the Council for consideration and advice ; section 61 (2), *post*.

**Inspectors.**—The Minister, for the purpose of enforcing the provisions of the Act, may appoint such number of inspectors as he may with the consent of the Treasury determine, and these inspectors have powers of entry and inspection of premises as provided in section 62, *post*, and may examine persons and require the production of documents. It is an offence to obstruct inspectors, or to refuse or neglect to answer questions ; section 62 (4), *post*.

**Regulations and Orders.**—For the purpose of giving effect to the Act it is necessary under many of its provisions that the Minister should make regulations or, in a few cases, that there should be Orders in Council. Section 86, *post*, provides that where such power is conferred it may be exercised in any given case either completely, or in part, and either unconditionally or subject to conditions, and that the power to make an Order in Council includes the power to vary or revoke the Order by a subsequent Order in Council. It should be noted that the power to make regulations, though not expressly stated to include this power of variation or revocation, does in fact include it, by virtue in this case of section 32 of the Interpretation Act, 1889 (18 Halsbury's Statutes 1003).

In the case of regulations made under section 77, *post*, which gives power to make regulations modifying the Act in its application to mariners and airmen, or orders made under section 83, *post*, relating to supplementary schemes the regulations or orders cannot be made unless a draft has been



laid before Parliament and has been approved by resolution of both Houses ; section 87 (1), *post*.

All other regulations under the Act must be laid before Parliament as soon as may be after they are made, and though they come into force when they are made, or on the date named in the regulations, they may be annulled by resolution of either House of Parliament during the next forty days of being so laid, not counting days when Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days ; section 87 (2) and (3), *post*.

**Accounts and Reports by Government Actuary.**—The Treasury have power to settle the form of the accounts, and the Comptroller and Auditor-General is to examine and certify every account and lay copies, together with his report thereon, before Parliament ; section 58, *post*.

The Government Actuary is to review the operation of the Act during the period ending with March 31 next after the expiration of five years from the appointed day, and thereafter every fifth year, and report on the financial condition of the fund and the adequacy or otherwise of the contributions to support the benefits payable. An interim review and report is, however, to be made during the period ending with March 31 next after the expiration of one year after the appointed day ; see generally as to these reviews and reports section 59, *post*.

**Expenses of Minister.**—In the first instance the expenses incurred by the Minister or by any other Government Department in carrying the Act into effect will be mainly met out of moneys provided by Parliament, but these expenses are repayable to the Treasury out of the Industrial Injuries Fund ; section 60, *post*.

**The Cost of the new scheme.**—On the basis of the benefit and contribution rates originally proposed, it was estimated that when stabilised post-war conditions prevail, the annual income of the Industrial Injuries Fund derived from the contributions of employers and insured persons would be £23 millions, so that the Exchequer contribution of one-fifth would amount to £4½ millions. By amendments moved on behalf of the Government, however, the basic rate for injury benefit and for 100 per cent. disablement benefit was raised to 45s., and a partly disabled worker who showed that he could not follow his regular occupation or suitable employment of an equivalent standard was given the right to have his disablement pension increased by 11s. 3d. This resulted in the insured person's contribution rate for men being increased from 3d. to 4d. and that for women from 2d. to 3d., which in turn will increase the amount of the Exchequer contribution.

It is estimated that the expenses of administration will be approximately £3 million a year ; this, if it proves to be the case, will be very considerably less than the total expenses, legal and administrative, incurred by employers, workmen, and the commercial and mutual insurance companies which dealt with employers' liability insurance under the Workmen's Compensation Acts, 1925 to 1943. (For figures see Appendix E to the Beveridge Report, Cmd. 6404).

## PART VI.—INDUSTRIAL DISEASES AND INJURIES NOT CAUSED BY ACCIDENT

**Former provisions as to industrial diseases.**—Under Part II of the Workmen's Compensation Act, 1925 (Willis, 581 *et seq.*), compensation was payable in respect of death or disablement caused by any scheduled industrial disease provided the disease was due to the nature of some employment in which the workman had been employed during the previous twelve months. The diseases scheduled to the 1925 Act were only six in number, but under powers conferred by section 43 (3) (Willis, 584) twenty-eight



other industrial diseases were scheduled (see Willis, 722, 724). In the case of persons employed in the processes named in Column 2 of the Third Schedule to the Act, as extended (these are processes which are specially liable to give rise to the disease in question) it is presumed that the disease is due to the employment unless the examining surgeon certifies to the contrary, or the employer proves to the contrary.

Compensation was payable—

- (i) if the workman obtained a certificate from the examining surgeon appointed for the district under the Factories Act, 1937 in which he is employed that he is suffering from the disease and disabled by it from earning full wages at his employment ; or
- (ii) if in pursuance of Factories Act Regulations he has been suspended from his employment by the examining surgeon in consequence of his suffering from the disease ; or
- (iii) if the employer agrees that he is liable to pay compensation without requiring a certificate from the examining surgeon ;
- (iv) where the death of a workman is caused by any scheduled disease.

In addition to Scheduled Diseases, power was given by section 47 of the 1925 Act (Willis, 627) to the Secretary of State to make schemes applying the Act to workmen suffering, as a result of their employment in some process, from one form or other of pneumoconiosis, which is a general term for fibrosis of the lungs due to dust, and includes silicosis, asbestosis and the condition of the lungs known as dust reticulation. Various schemes have been made under this power, and these will be found on p. 1004 *et seq.* of Willis. Under all of them, in the absence of agreement between a workman and his employer, compensation was only payable on a certificate given by the Medical Board set up under the schemes.

**New provisions.**—Section 55 (1), *post*, provides generally that a person who, under the Act, is insured against personal injury caused by accident arising out of and in the course of his employment shall be insured also against—

- (i) any prescribed disease ; and
- (ii) against any prescribed personal injury not caused by accident arising out of and in the course of his employment,

provided that the disease or injury is due to the nature of that employment and that it developed on or after the day appointed by the Minister.

The Minister may, for the above purposes, prescribe any disease or injury in relation to any insured persons provided he is satisfied as to two things, viz. (i) that it ought to be so treated, having regard to its causes and incidence and any other relevant considerations as a risk of the occupation and not as a risk common to all persons ; and (ii) that it is such that, in the absence of special circumstances, the attribution of particular cases to the employment can be established or presumed with reasonable certainty ; section 55 (2), *post*.

As to the special provisions in regard to pneumoconiosis see section 57 of the Act, *post*.

The benefit payable under these provisions in respect of a prescribed disease or injury is the same as in the case of a personal injury caused by accident arising out of and in the course of a person's employment, subject to the power to make different provision in certain cases. The regulations to be made under this Part of the Act will also provide for presuming that, in certain circumstances, a disease or injury was due to the employment, etc. Until such regulations are made the effect of the new Act on this part of the subject cannot be estimated, but as the Minister is being given wider powers than those previously possessed by the Secretary of State



under the Workmen's Compensation Act, 1925, it is presumably intended that he will use them more widely.

## PART VII.—LEGAL PROCEEDINGS AND OFFENCES

**Offences which may be committed.**—One of the subsidiary results of the new social legislation of the type represented by the present Act is that numbers of new criminal offences are brought into being, some of such character as hardly to merit this description, and others (those for example which involve fraud) serious.

The following specific offences are created by the present Act.

<i>Offence</i>	<i>Section</i>	<i>Maximum Penalty</i>
1. Failure to pay contribution ..	3 (4)	£10
2. Employer deducting or attempting to deduct his contribution from insured person's wages ..	4 (2)	£10
3. Wilfully delaying or obstructing an Inspector in the exercise of his powers .. .. .	62 (4) (a)	£10 on first offence. £50 on second or subsequent offence.
4. Refusal or neglect (a) to answer question; or (b) to furnish information; or (c) to produce document when required to do so .. .. .	62 (4) (b)	
5. Buying, selling or offering for sale, taking or giving in exchange, pawning or taking in pawn any insurance card or any used insured stamp .. ..	67 (1) (a)	£100 and 3 months' imprisonment.
6. Affixing any used insurance stamp to any insurance card ..	67 (1) (b)	
7. For the purpose of obtaining any benefit or payment or for any other purpose connected with the Act (a) knowingly making a false statement or false representation; or (b) producing or furnishing, or causing or knowingly allowing to be produced or furnished, any document or information which a person knows to be false in a material particular .. ..	67 (1) (c)	

In addition to the above specific offences, the regulations to be made under the Act may provide that the contravention or failure to comply with those regulations (not being regulations requiring any person to submit himself to medical treatment) shall be an offence against the Act, and punishable on summary conviction with a penalty of not more than £10 for each offence, or, where the offence consists of continuing the offence after conviction, £10 together with a further £10 for each day during which it is so continued; section 67 (2), *post*.

The Postmaster-General may also by regulations apply the provisions, including the penal provisions, of the Stamp Duties Management Act, 1891, as amended, and section 9 of the Stamp Act, 1891, as amended, and section 65



of the Post Office Act, 1908, as respects insurance stamps, and there may therefore be prosecutions for contraventions of those Acts; see section 66 (2), *post*.

As to the recovery of contributions on prosecutions under the Act see section 69, *post*, and note on "Failure to pay contributions", p. 14, *ante*.

**Offences by bodies corporate.**—Where an offence which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, he as well as the body corporate is deemed guilty of the offence, and liable to be proceeded against and punished accordingly; section 67 (3). It may be noted that it has become the practice to insert some such provision as this in modern statutes, though the wording and effect of these provisions differs considerably in the different Acts. In the present case, before an individual can be punished (i) he must be separately charged; and (ii) his consent, connivance or negligence must be proved by the prosecution; and (iii) he must be a director, manager, secretary or other officer of the corporation. There are no definitions of any of these four expressions. Hence it would appear that the scope of the word "director" must be restricted, and that it includes those persons only that have been duly appointed to be directors in accordance with the articles of association of the company and the provisions of the Companies Act, 1929; see, *e.g.*, sections 140 to 142 (2 Halsbury's Statutes 865-867). A person who merely acts as if he were a director, without having been duly appointed as such, would not be properly chargeable as a director, assuming that *Dean v. Hiesler*, [1942] 2 All E.R. 340, is correctly decided, although in a proper case he might be charged as a "manager". This latter term is not one which has been given a definite meaning by the Companies Act, 1929, in the sense that "director" has, for a person cannot really be a director unless the provisions of the articles of association and the Act are complied with, though it is to be observed that by section 380 (1) of the Act (2 Halsbury's Statutes 1006) "director" includes any person occupying the position of director, by whatever name called. The question of who is a manager of a company has been judicially considered in connection with section 84 of the Larceny Act, 1861 (4 Halsbury's Statutes 554) which makes it a misdemeanour for a manager of any body corporate to publish false statements with intent to deceive or defraud. It was held by the Court of Crown Cases Reserved that the section applied to a person who, without having been appointed an officer of the company, has in fact acted as the manager of the affairs of the company; *R. v. Lawson*, [1905] 1 K.B. 451; 9 Digest 547, 3611. The facts and *ratio decidendi* in this case throw doubt on the decision in *Dean v. Hiesler*, *supra*, particularly as it does not appear from the report that *R. v. Lawson* was brought to the notice of the Divisional Court which decided *Dean v. Hiesler*. The facts were that the company's articles gave the directors power to appoint a manager, but no minute of the board appointing a manager was in existence, and there was no evidence of any actual appointment of Lawson as manager, but Lawson held 50,000 out of 55,000 issued shares, and had provided the directors with the shares which they held, and, with their concurrence, he managed the affairs of the company and dictated its policy. The Judge directed the jury that if the prisoner was the person who in fact managed the affairs of the company he was a manager within the meaning of the section. This was upheld. See also *Gibson v. Barton* (1875), L.R. 10 Q.B. 329; 9 Digest 539, 3555. *Edmonds v. Foster* (1875), 45 L.J.M.C. 41; 9 Digest 584, 3914, is to the same effect.

"Secretary" again is a word which is not defined by the Companies Act, 1929, although that Act, while not requiring a company to have a secretary, imposes various duties on the secretary if there happens to be one. No doubt it would be held that a person who acted as secretary (*e.g.*, by



delivering and signing the statutory declaration for commencing business under section 94 (1) (c) of the 1929 Act (2 Halsbury's Statutes 833) or signing the annual return under section 110 (1), *ibid.* (2 Halsbury's Statutes 843) or signing cheques as secretary and generally performing the ordinary work of a secretary of a company) was within the section, although he had never been formally appointed as secretary, or was given some other description by the company itself.

"Other officer of the body corporate" is also an elastic term which it appears impossible to define. Obviously it is not intended to render every servant of the company liable to be prosecuted; yet there are many statutory definitions to the effect that "officer" includes servant; see the Local Government Act, 1933, section 305 (26 Halsbury's Statutes 467); Public Health Act, 1936, section 343 (1) (29 Halsbury's Statutes 538); and the Road Traffic Act, 1930, section 116 (4) (23 Halsbury's Statutes 685). Presumably the term is only intended to refer to persons in some sort of executive position who are able to exercise some measure of control, and who may thus properly be held to be personally liable if they connive or consent to breaches of the Act, or are negligent. It may be noted that in section 380 of the Companies Act, 1929 (2 Halsbury's Statutes 1005) there is no definition at all of "officer." In the Friendly Societies Act, 1896, section 107 (8 Halsbury's Statutes 1008), "officer" includes any trustee, treasurer, secretary or member of the committee of management of a society or branch, or person appointed by the society or branch to sue and be sued on its behalf. Similarly in section 79 of the Industrial and Provident Societies Act, 1893 (9 Halsbury's Statutes 762), "officer" extends to any treasurer, secretary, member of the committee of management or other directing body, manager or servant (other than a servant appointed by the committee) of a society. These two last statutory definitions, although only applicable to the interpretation of the particular Acts, do express the general meaning of the term.

As to the recovery of contributions on the prosecution of a body corporate for failure to pay the same see section 69 (7) of the Act, *post*, and note on "Failure to pay contributions", *ante*, p. 14.

**General provisions as to prosecutions.**—No proceedings for an offence under the Act can be instituted except by or with the consent of the Minister, or by an inspector or other officer authorized in that behalf by special or general directions of the Minister. Any inspector or officer so authorized may prosecute or conduct proceedings before a court of summary jurisdiction although he is not of counsel or a solicitor (section 68 (1) and (2), *post*), and the right to conduct proceedings before the court is not confined to the particular officer who instituted the proceedings; *R. v. Northumberland Justices, Ex parte Spicer* (1923), 92 L.J.K.B. 621; 44 Digest 1308, 137.

Proceedings for an offence may be commenced at any time (i) within the period of three months from the date on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence, comes to his knowledge; or (ii) within the period of twelve months after the commission of the offence, whichever period last expires; section 68 (3), *post*. A certificate purporting to be signed by or on behalf of the Minister as to the date on which evidence came to his knowledge is conclusive; section 68 (4), *post*.

In many proceedings for an offence under this Act, the wife or husband of the accused is competent to give evidence, whether for or against the accused, but is not compellable to give evidence, nor, in giving evidence, to disclose any communication made to her or him during the marriage by the accused; section 68 (5), *post*. This provision declares the law as laid down in section 4 of the Criminal Evidence Act, 1898 (8 Halsbury's Statutes 251); *Leach v. R.*, [1912] A.C. 305; 14 Digest 453, 4800, and *R. v. Acastor* (1912), 106 L.T. 384, C.C.A.; 14 Digest 453, 4805. See generally 13 Halsbury's Laws (2nd Edn.) 728.



As to the recovery of contributions on prosecutions under the Act see section 69, *post*, and the note on "Failure to pay contributions", p. 14, *ante*.

## PART VIII.—THE PREVENTION OF ACCIDENTS AND THE AFTER-CARE OF INSURED PERSONS

**Introductory note.**—Sir William Beveridge in paragraph 79 (ix) of his Report (Cmd. 6404) observed that "in the 45 years of its existence, the present (i.e., Workmen's Compensation) system of dealing with the results of industrial accidents and disease has contributed little or nothing to the most important purpose of all; namely, restoration of the injured employee to the greatest possible degree of production and earning as soon as possible".

This is a subject which had already, despite—perhaps because of—the war received a measure of attention. The Disabled Persons (Employment) Act, 1944 (25 Statutes Supp. 56) received the Royal Assent on March 1, 1944, and certain provisions of the Act (sections 1–5, and in part, 15, 16, 17, 18, 20–23 and Schedules I and II) were brought into force on August 15, 1944, by S.R. & O. 1944, No. 936; Emergency Service [14]. These sections relate to the definition of a "disabled person" and the setting up by the Minister of Labour and National Service of vocational training services and industrial rehabilitation courses and the making of payments to persons attending the courses. The remainder of the Act, which establishes a register of disabled persons and imposes an obligation on employers who employ a substantial number of employees (in general twenty) to give employment to a quota of disabled persons ascertained as provided by section 10 of the Act (25 Statutes Supp. 63), were brought into operation as from June 1, 1945, by S.R. & O. 1945, No. 615; Emergency Service [14].

**Relation between Disabled Persons (Employment) Act, 1944, and present Act.**—By the 1944 Act the primary responsibility for the training of injured men is thus placed upon the Minister of Labour and National Service, but by section 74, *post*, it is provided that the Minister of National Insurance may make arrangements with him for securing that persons entitled to disablement benefit may take full advantage of vocational training courses, industrial rehabilitation courses, and facilities in connection with employment or work under special conditions provided under the Disabled Persons (Employment) Act, 1944, and may make towards the cost of providing those courses and facilities such contributions out of the Industrial Injuries Fund as he may, with Treasury consent, determine. It should also be noted that by section 25 (2) (c), *post*, regulations may provide for requiring persons in receipt of injury or disablement benefit to attend any vocational training or rehabilitation courses, provided under the Disabled Persons (Employment) Act, 1944, which, in the opinion of the Minister of Labour and National Service, is appropriate in their case, and the regulations may provide for forfeiture of benefit in the event of failure on the part of the beneficiary, without reasonable cause, to attend such course; section 32 (2) (a), *post*.

**Promotion of research, etc.**—The Minister may either employ persons to conduct research, or contribute towards or otherwise assist research conducted by others, into the causes and incidence of, and methods of prevention of accidents, injuries and diseases against which persons are insured; section 73, *post*.

He may also secure the provision and maintenance, free of charge or at a reduced charge, of equipment and appliances for persons who have lost limbs as a result of industrial accidents, or who are otherwise for that reason in need of appliances, and the expenses so incurred are payable out of the Industrial Injuries Fund; section 75, *post*.



## PART IX.—EXTENT OF THE APPLICATION OF THE ACT AND TRANSITIONAL PROVISIONS

**Territorial application.**—The Act does not (except as to section 84 (4), referred to *post*) apply at all to Northern Ireland, but it applies to Scotland as well as to England and Wales, though in its application to Scotland there are certain modifications necessitated by the different legal systems of the two countries. These modifications are contained in section 90, *post*, and their effect is noted in the appropriate place in the notes to each of the other sections of the Act affected.

Power is conferred by section 84 (1), *post*, on the Parliament of Northern Ireland, notwithstanding any limitations imposed by the Government of Northern Ireland Act, 1920, to enact similar legislation in Northern Ireland, and to repeal as respects Northern Ireland any United Kingdom legislation which is repealed by the present Act. If the Parliament of Northern Ireland passes equivalent legislation, the Minister, with Treasury consent, may make reciprocal arrangements with such authority as may be specified in Northern Irish legislation for co-ordinating the two systems of insurance so as to ensure that they will operate as a single system, and the Minister may make regulations for giving effect thereto; section 84 (1) and (4), *post*. To carry these arrangements into effect a Joint Authority, consisting of the Minister and the appropriate authority in Northern Ireland, is to be constituted under section 84 (2), *post*, with power to make financial adjustments and to co-ordinate the two systems generally.

His Majesty in Council may also make Orders for giving effect to any agreement with the Government of any part of His Majesty's dominions other than Northern Ireland, or the Government of any foreign country, providing for reciprocity in matters relating to the payment of compensation or benefit to employed persons in respect of industrial or similar injuries, and such Orders may make provision for modifying or adapting the Act in its application to cases affected by the agreement, and other ancillary matters; section 85, *post*.

### Past cases and the repeal of the Workmen's Compensation Acts.

—As from the day appointed by the Minister all the existing Workmen's Compensation Acts (as specified in Schedule IX to the Act) are repealed, and it is provided that workmen's compensation shall not be payable in respect of any employment after the appointed day.

This repeal is, however, subject to the following important provisos:—

- (i) the repealed enactments (including the Workmen's Compensation (Supplementary Allowances) Act, 1940 (Willis, 748 *et seq.*), and the Workmen's Compensation (Temporary Increases) Act, 1943 (Willis, 760 *et seq.*), which latter is for this limited purpose, although repealed, made permanent in its application) continue to apply to past cases in which the right to compensation is by virtue of employment before the appointed day;
- (ii) Regulations may make such transitional or consequential provisions as appear necessary or expedient having regard to the repeal of the Workmen's Compensation Acts in relation to diseases and to injuries not caused by accidents, including provisions for modifying or winding up schemes;
- (iii) Rules of Court made under the Workmen's Compensation (Transfer of Funds) Act, 1927 (Willis, 1193) are not affected; section 89 (1) and (2), *post*.

Orders in Council may also be made for the consequential purposes mentioned in section 89 (3), *post*.

Finally it should be noted that the unemployability supplement and



constant attendance allowance (see note on p. 24, *ante*) are extended to past cases. This is done by section 82, *post*, which provides that regulations may be made providing that this shall be payable where a person on or after the appointed day is entitled to weekly payments under the Workmen's Compensation Acts, or under any certified contracting out scheme, and that person as a result of the injury or disease would, for the purposes of the 1944 Act, be treated as being incapable of work and likely to remain permanently so incapable, or where as a result of injury or disease he requires constant attendance. These payments will come out of the Industrial Injuries Fund, and the provisions of the Act relating to benefit and the making and determination of claims, will be applied by regulations.

Where cases have been wholly settled by lump sum agreements or the redemption of weekly payments by the employer the matter is, of course, closed, and no question of the unemployment supplement arises.

## PART X.—SUPPLEMENTARY SCHEMES

Any body of persons claiming to represent or to be treated as representing insured persons of any class and their employers may submit a scheme to the Minister for supplementing the rights conferred on insured persons by the Act, whether by providing for payments additional to statutory benefit or by providing for payments in other cases, or otherwise. The Minister may then by order approve the scheme, with or without amendment, after taking steps to ascertain so far as is practicable the views of any insured persons affected thereby but not represented by the submitting body; section 83 (1) and (2), *post*. Schemes may (a) apply the provisions of the Act, particularly as to the determination of questions of its application to any person or class of persons; (b) provide for the constitution of a body to administer the scheme; (c) provide for the Minister's part in the administration; (d) provide for the payment of his fees and charges out of any available funds; (e) contain such other provisions as he may think necessary; section 83 (3), *post*. No part of the funds of such a scheme may be derived from moneys provided by Parliament, except that there may be a scheme, whereunder contributions are payable by employers, in respect of persons whose remuneration is or may be defrayed out of moneys provided by Parliament; section 83 (4), *post*. The income of a scheme is to be exempt from income tax; section 83 (6), *post*. The Minister has power to vary or amend the provisions of a scheme and to intervene where the fund constituted under a scheme is or is likely to become and to continue insufficient, or more than reasonably sufficient, to discharge the liabilities, for the purpose of modifying the rates of contribution or the rates or periods of benefit to secure the reasonable solvency of the fund and no more; section 83 (8), *post*.



# NATIONAL INSURANCE (INDUSTRIAL INJURIES) ACT, 1946

9 & 10 GEO. 6. CH. 62.

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*An Act to substitute for the Workmen's Compensation Acts, 1925 to 1945, a system of insurance against personal injury caused by accident arising out of and in the course of a person's employment and against prescribed diseases and injuries due to the nature of a person's employment, and for purposes connected therewith.* [26th July, 1946.]

## PART I

### INSURED PERSONS AND CONTRIBUTIONS

**1. Persons to be insured.**—(1) Subject to the provisions of this Act (a), all persons (b) employed (c) in insurable employment (d) shall be insured in manner provided by this Act against personal injury (e) caused on or after the appointed day (f) by accident arising out of and in the course of such employment (g).

(2) For the purposes of this Act, every employment (h) specified in Part I of the First Schedule to this Act is an insurable employment (i) unless it is an excepted employment (k), that is to say an employment specified in Part II of that Schedule :

Provided that Parts I and II of that Schedule shall have effect subject to the provision made by Part III thereof for preventing anomalies (l).

### NOTES

**General effect of section.**—This is the section which imposes the general obligation on workers to be insured, and which prescribes what they are to be insured against, viz., personal injury by accidents arising out of and in the course of the employment. The kinds of benefits to be derived from the insurance, and questions relating to entitlement to benefit, are dealt with in Part II of the Act, *post*. Cf. section 1 of the National Insurance Act, 1946.

(a) **Subject to the provisions of this Act.**—Although the present Act, broadly speaking, covers all persons working under a contract of service or apprenticeship, and there is no income limit, and no contracting-out schemes, the obligation to be insured arises only where a person falls within the provisions of the Act as to insurable employment, and the general obligation to be insured which is imposed by section 1 (1) is subject to the qualifications introduced by the subsequent provisions of the Act. Persons are, of course, only insured if they have complied with the provisions of the Act.

(b) **All persons.**—There is no qualification on the obligation to be insured based on age, sex, or the amount of wages or salary, and the qualifications arising because of the nature of the employment depend upon the definition, or rather description, of what are "insurable employments" and what are "excepted employments", as to which see notes, *infra*.

(c) **Employed: Employment.**—There are no definitions in the Act of the words "employed" and "employment", presumably because it was thought that it was not necessary to have a meaning for these words used by themselves because the operative words which really govern the scope of the entire Act are "employed in insurable employment", and these words have the different meanings attributed to them by Part I of the First Schedule. If, however, that Schedule is referred to, it will be observed that although under paragraph 1 of Part I there must be a contract of service or a contract of apprenticeship, in other paragraphs of the Schedule this requirement of a contract of service is not present: e.g. in paragraph 6 of the First Schedule, Part I, we find "Employment in Great Britain under any public or local authority constituted in Great Britain": in paragraph 8, "Employment in Great Britain as a member . . . of any such fire brigade . . . as may be prescribed". In these cases one is driven to ask what precisely is meant by "employment".

In the first place it may be observed, looking solely at the statute that a distinction is being drawn in some way between employment under a contract of service (as defined in paragraph 1 of Part I of the First Schedule, by which "contract of service" means contract of service or apprenticeship, whether written or oral, and whether expressed or implied) and employment not under a contract of service: compare paragraphs 1, 2, and 5 of the First Schedule, Part I, in which employment under a contract of service is required, with paragraphs 3, 4, 6, 7 and 8 thereof, where this requirement does not appear. A similar distinction appears in Part II of the First Schedule, which deals with "excepted employments" (as to which, see note (k), *post*): compare paragraphs 2 and 3 with paragraphs 1, 4-8. It may be noted that the question raised here did not arise under the Workmen's Compensation Act, 1925, because although section 1 of that Act said generally "if in any employment", etc., the only persons who could claim compensation were "workmen", as defined by section 3, which required the employment to be under a contract of service or apprenticeship with an employer, etc. (see Willis, 37th Edn., p. 160 *et seq.*).



It does not appear that the term "employment", *simpliciter*, has ever received a comprehensive statutory definition, though it is a word much used in many Acts. All the definitions merely say that "employment" "includes employment" in some particular way, without defining the word itself. See for example section 170 (18) of the Education Act, 1921; 7 Halsbury's Statutes 214; where "employment" used "in reference to a child or young person includes employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or young person or to any other person", a definition which is not reproduced in the Education Act, 1944; 37 Halsbury's Statutes 123; which repeals the 1921 Act. There is, however, an equivalent definition in section 30 of the Children and Young Persons Act, 1933; 26 Halsbury's Statutes 192; under which "a person who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour": see also section 152 (6) and section 153 of the Factories Act, 1937; 30 Halsbury's Statutes 300, 301. On the other hand, in the Agricultural Wages Regulation Act, 1924, section 16 (1); 1 Halsbury's Statutes 134; the expression "employment" means "employment under a contract of service or apprenticeship".

On the whole it seems correct to say that nothing in any of the statutory interpretation sections assists in elucidating the meaning of the term "employment", and in none of the Acts which most closely resembled the present Act in their approach was there any definition of the term at all: the Acts referred to are:—

The Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 499.

The National Health Insurance Act, 1936; 29 Halsbury's Statutes 1064.

The Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1198.

A reference to cases in which the word "employment" has been discussed does not entirely clarify the position, but the following negative propositions are put forward with some diffidence:—

(i) There may be employment although there is no contract of service which gives rise to the common law relationship of master and servant. Thus under rule 156 of the Bankruptcy Rules, 1915; 1 Halsbury's Statutes 744; substituted service may be effected by the creditor or his solicitor "or by some other person in their employ", and it has been held that this does not necessitate employment as a servant, and a person may be employed *pro hac vice*; *Re Blackman, Ex. parte Branfill* (1892), 40 W.R. 670; 4 Digest 137, 1259.

(ii) There may be employment although there is no remuneration. See the statutory definitions referred to, *ante*. In a case under section 26 of the Post Office Offences Act, 1837, now replaced by sections 57 and 89 of the Post Office Act, 1908; 12 Halsbury's Statutes 61, 72; PARKE, B., said that "the term employed in this statute means engaged or occupied" and thus a person who gratuitously assisted in the sorting of letters was held liable; *R. v. Reason* (1853), Dears C.C. 226; 37 Digest 374, 51. See also *R. v. Foulkes* (1875), L.R. 2 C.C.R. 150; 15 Digest 921, 10,146; where the son of a clerk to a local board who lived with his father and assisted him in the office, but who was not paid anything and who was under no contract of service with anyone, was treated as being a person employed in the capacity of a clerk or servant for the purposes of the Larceny Act, 1861, now section 17 of the Larceny Act, 1916; 4 Halsbury's Statutes 822.

(iii) The nature of what is to be done by the person is in itself no test of whether he is employed or not. Thus, for example, the London County Council (General Powers) Act, 1910, section 4, defined an employment agency as any agency or registry for or in connection with the employment of persons in any capacity. On a prosecution for carrying on an employment agency without being licensed under the Act it appeared that the company in question organised popular lectures and supplied lecturers who were engaged through the company, and who paid the company 10 per cent. of their lecture fees. RIDLEY, J., said "employment" meant "more than the relationship of master and servant. One cannot use the word according to its proper meaning without admitting that it includes the employment of men and women who are delivering lectures"; *Lecture League, Ltd. v. London County Council* (1913), 108 L.T. 924, at p. 927, D.C.; 44 Digest 1304, 75.

It must, however, be remembered that it is this particular Act which has to be construed, and although it has been thought proper to draw attention to the above general considerations and cases, more is to be gained by construing the particular words used in regard to "insurable employment", as to which, see notes to the First Schedule thereon, *post*, and the next note.

(d) **Insurable employment.**—By section 1 (2), *supra*, every employment specified in Part I of the First Schedule is an insurable employment unless it is one of the excepted employments specified in Part II of that Schedule, but this is subject to regulations which may be made by the Minister of National Insurance, with Treasury consent, for preventing anomalies in the cases specified by Part III to the First Schedule.

Part I of the First Schedule first makes the general provision in paragraph 1 that employment in Great Britain under any contract of service or apprenticeship, whether written or oral, and whether expressed or implied (referred to as a "contract of service") is an insurable employment, and then specifies in seven further paragraphs



seven classes of employment which shall also be insurable employments, some of which would appear to be already covered, at any rate to a certain extent, by the general provision just set out: e.g., paragraph 6 provides that "employment in Great Britain under any public or local authority constituted in Great Britain" is an insurable employment.

As mentioned above in the note on "employment", this word, used in the Act without any definition, is not one which has any precise legal connotation. It is therefore suggested that the correct approach in interpreting the provisions of the First Schedule which determine what are insurable, and what are excepted, employments, is that adopted by ROWLATT, J., in *Davies v. Braithwaite*, [1931] 2 K.B. 628; Digest Supp.; in dealing with the word "employment" as used in Schedule E to the Income Tax Act, 1918; 9 Halsbury's Statutes 581. The question was whether an actress who acted in stage plays in England and America under various contracts, who performed in films, on the wireless and who made gramophone records, was assessable under Schedule D in respect of profits derived from her profession or vocation, or under Schedule E in respect of the profits of her employment. In holding that the assessment should be under Schedule D, ROWLATT, J., said (at p. 634) that "when the word 'employment' is used in connection with a profession or vocation in Schedule D it means the way in which a man employs himself. But 'employment' in Schedule E means something different. In that Schedule it means something analogous to an office and which is conveniently amenable to the scheme of taxation which is applied to offices as opposed to the earnings of a man who follows a profession or vocation". He held that having regard to the context "the legislature had in mind employments which were something like offices, and thought of the expression 'posts' as conveying the idea required" (*ibid.* p. 635). Unless some such view is accepted in regard to the present Act it would appear that strange anomalies will arise. Suppose it were held that in every case where one did work for remuneration for a public or local authority there was an "Employment in Great Britain under any public or local authority constituted in Great Britain" as provided by paragraph 6 of the First Schedule, Part I, *post*, it would have to be held, for example, that a barrister who gave one or two lectures a week at the L.C.C. evening institutes was in an insurable employment; cf. *Lecture League, Ltd. v. London County Council*, noted, *ante*, in note on "Employment". On the other hand, a person similarly engaged by a private society would not be, for there is no contract of service, and he would not therefore fall within paragraph 1 of the First Schedule, Part I.

It may be noted here that any question whether a person is employed in insurable employment is to be determined by the Minister (section 36 (1) (a) (i)), but that the Minister may refer any question of law arising in connection with such a determination for decision by the High Court, and any person aggrieved by the decision of the Minister on any such question of law which is not referred to the High Court may appeal from the Minister's decision to the High Court; see section 37 of the Act. This provision is almost identical with that of section 161 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1166; in regard to the determination of what is employment within the meaning of that Act, and the First Schedule to that Act had certain features in common with the present Act. For similar provisions, see also sections 12 and 84 of the Unemployment Insurance Act, 1935, and the First Schedule thereto; 28 Halsbury's Statutes 509, 551, 570.

It is to the decisions given under these Acts, and the earlier Acts which they replaced, that reference must be made for cases analogous to those that will arise under the present Act, but there are not many decisions which assist.

See generally, as to what are and what are not insurable employments, the notes to the First Schedule, *post*.

(e) **Personal injury by accident.**—These are the same words as those used in section 1 of the original Workmen's Compensation Act, 1897; Willis, 1127; the Workmen's Compensation Act, 1906; Willis, 1137; which repealed and replaced the earlier Act, and in the Workmen's Compensation Act, 1925; Willis, 6; which was in force immediately before the present Act came into operation.

The cases deciding what the expression means are collected on pp. 8-14 of Willis, to which reference should be made, and see also notes to section 7, *post*. As to the extension of insurance to diseases, see Part IV of the Act, *post*.

(f) **Appointed day.**—As to this, see section 88 (1), *post*. No day has been appointed at the time of going to press.

(g) **Arising out of and in the course of the employment.**—These words again, which describe what type of accidents are to be insured against, and which are also the test of entitlement to benefits under the Act (see section 7, *post*) are the same as the words used to determine the extent of the employer's liability to pay compensation in the Workmen's Compensation Acts referred to in note (e), *supra*.

The great bulk of the reported decisions under the Workmen's Compensation Acts deal with the construction to be placed on these apparently simple words. In moving the Second Reading of the Bill on October 10, 1945, the Minister of National Insurance (414 H. of C. Official Report 270) said that "we have looked at many alternative phrases which have been suggested to us as substitutes for those familiar words, but we have decided that it is better to retain the words we have already in the Acts.



Not the least of our reasons for doing so was the fact that the phrase has been fully examined and interpreted by the courts, and its meaning is now, I think, reasonably clear and certain . . . I am convinced that it is better to stick to the devil we know, than fly to devils we know not of". It should, however, be noted that section 7 (4), *post*, makes the new provision that an accident arising in the course of an insured person's employment is to be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment. This is an important change affecting the onus of proof, and is discussed in the notes to section 7, *post*, which deals with the right to benefits.

The cases decided under the Workmen's Compensation Acts, 1897–1925, on the words "arising out of and in the course of the employment" are collected on pp. 20 to 150 of Willis.

(h) **Employment.**—See note (c), *ante*.

(i) **Insurable employment.**—See note (d), *ante*, and the First Schedule, Part I, and notes thereto, *post*.

(k) **Excepted employment.**—See the First Schedule, Part II, and notes thereto, *post*.

(l) **Preventing anomalies.**—See the First Schedule, Part III and notes thereto, *post*.

**2. Source of funds.**—For the purpose of providing the funds required for paying benefit, and for making any other payments which under this Act are to be made out of the Industrial Injuries Fund (a) established under this Act, contributions shall, subject to the provisions of this Act, be payable as follows:—

- (a) every insured person of the classes set out in the first column of Part I of the Second Schedule to this Act and every employer of any such person shall be liable as from the appointed day (b) to pay weekly contributions at the respective rates set out in the second and third columns of that Part of that Schedule, unless exempted from that liability as provided in Part II of that Schedule (c); and
- (b) there shall be paid out of moneys provided by Parliament (d), in such manner and at such times as the Treasury may determine, sums estimated in manner aforesaid to be equal to one-fifth of the aggregate amount of contributions paid under the foregoing paragraph.

## NOTES

**General effect of section.**—In the Explanatory and Financial Memorandum printed with the re-issue of the Bill on August 23, 1945, it was estimated that the employers' and workmen's contributions would amount, in stabilised post-war conditions, to £23,000,000, on the basis of adult male contributions being 3d. by the insured person and 4d. by the employer, and adult female contributions being 2d. by the insured person and 3d. by the employer. The Exchequer contribution under section 2 (b) of one-fifth of the aggregate of the employers' and insured persons' contributions would be about £4,500,000. The Government, however, decided to raise the basic rate for injury benefit, which was originally fixed at 40s., to 45s. (see the Third Schedule *post*) and to give the worker the right to claim an addition of 25 per cent. to his medical board assessment, provided it is not thereby raised above 100 per cent., if he can show to the satisfaction of a local appeal tribunal that by reason of his injury he can no longer follow his previous occupation, and cannot be retrained for an occupation of equivalent standard. This decision has been implemented by section 14, *post*, the increase being given by an increase of disablement pension of 11s. 3d. per week. These improvements in benefit rates necessitated the raising of the insured persons' contributions to 4d. for male and 3d. for female workers; see the Second Schedule, *post*. The insured person and his employer are thus equal contributors, as was the original intention; see paragraph 34 (ii) of Cmd. 6551 (September, 1944) and paragraph 11 of Cmd. 6651 (June, 1945).

See also Part II of the General Introduction to the Act, *ante*. Cf. section 2 of the National Insurance Act, 1946.

(a) **Industrial Injuries Fund.**—See section 58, *post*, and notes thereto.

(b) **Appointed day.**—As to this, see section 88 (1), *post*. No day has been appointed at the time of going to press.

(c) **The Second Schedule.**—See this Schedule and notes thereto, *post*, and see also note on "General effect of section", *supra*.

(d) **Moneys provided by Parliament.**—The amount of the moneys to be provided by Parliament each year depends upon the aggregate amount of the contri-



butions paid by insured persons and their employers, and assuming that these at the present rates produce £25 millions the Exchequer would be liable to contribute £5 millions.

As to reports by the Government Actuary, see section 59, *post*.

The expenses incurred by Government Departments in carrying the Act into effect are mainly to be defrayed in the first instance out of moneys provided by Parliament (section 60 (1), *post*) but the expenses so defrayed will be repayable to the Treasury out of the Industrial Injuries Fund (section 60 (2), *post*).

**3. Payment of contributions.**—(1) Except where regulations otherwise prescribe (a), the employer shall, in the first instance (b), be liable to pay both the contribution payable by himself and also, on behalf of and to the exclusion of the insured person (c), the contribution payable by that person; and for the purposes of this Act contributions paid by an employer on behalf of an insured person shall be deemed to be contributions by the insured person.

(2) A weekly contribution shall be payable (d) for each contribution week (e) during the whole or any part of which an insured person is employed (f):

Provided that—

(a) where one weekly contribution has been paid (g) in respect of an insured person for any week, no further contribution shall be payable in respect of him for the same week; and

(b) where, as respects any insurable employment, no services have been rendered by an insured person during any week, and no remuneration is paid wholly or partly in respect of any day in that week (h) other than a day on which he either—

(i) has been rendered incapable of work (i) by reason of some specific disease or bodily or mental disablement and would but for the incapacity have been working; or

(ii) does not work in a normal week;

then, as respects that employment, no contribution shall be payable in respect of the insured person for that week.

(3) Regulations may provide (k), as respects any period during which no services are rendered by an insured person, that for the purposes of this Part of this Act any payments which the insured person receives or is entitled (whether conditionally or not) to receive in any prescribed (l) circumstances are or are not to be deemed to be remuneration paid in respect of any day in that period.

(4) If any employer or insured person fails to pay any contribution (m) which he is liable under this Act to pay, he shall be liable on summary conviction (n) to a fine not exceeding ten pounds (o).

(5) The provisions of Part III of the Second Schedule to this Act shall have effect as respects the return of contributions paid erroneously, and the provisions of Part IV of that Schedule shall have effect as respects the payment of contributions through an employment exchange as defined in the said Part IV (p).

#### NOTES

**General effect of section.**—The scheme of the Act, so far as finance is concerned, is that an "Industrial Injuries Fund" shall be established by means of weekly contributions paid by employers and workmen augmented by the State to the amount of one-fifth of the aggregate amount of these contributions: see section 2, *ante*, and section 58, *post*. As in the case of the National Health Insurance Act, 1936 (see section 18; 29 Halsbury's Statutes 1080) and similar Acts, the contribution for both employer and worker is payable in the first instance by the employer (section 3 (1), *supra*), but the employer may deduct the amount of the worker's contribution from the worker's wages in accordance with the provisions of section 5, *post*.

The present section prescribes the periods for which the contributions are to be paid, and imposes the general obligation to pay both employer's and worker's contribution on the employer. The new scheme will be operated by means of cards on which the employer is required to affix and cancel stamps, as is the case at present with Health and Unemployment insurance. It has been held that it is not a condition precedent to the employer's liability to pay the contributions that the employee should present an



insurance card to his employer, and that it is the duty of the employer to see that a card is obtained; *Nunnery Colliery, Co. Ltd. v. Stanley* (1914), 111 L.T. 843; 44 Digest 1307, 134. As to regulations as to the payment of contributions by insurance stamps see sections 65 and 66, *post*. Cf. section 4 of the National Insurance Act. As under the repealed Acts and under the National Insurance Act, 1946, employers' contributions under this Act are presumably allowable as an expense when computing profits or gains for the purposes of income tax. But employees' contributions are not so allowable, in distinction from such contributions under the National Insurance Act, which are allowable under section 27 of the Finance Act, 1946. That section does not refer to this Act. The distinction is deliberate, the intention being that under this Act the workman shall not be relieved of tax in respect of his contributions, but on the other hand shall not be taxed on benefit received (424 H. of C. Official Report 506-512). Most of the benefits under the National Insurance Act, 1946, as well as family allowances, are taxable under section 27 of the Finance Act, 1946, *supra*.

(a) **Except where regulations otherwise prescribe.**—"Regulations" by section 88 (1), *post*, means regulations made by the Minister under this Act, *i.e.* under the section giving the power and under sections 86 and 87, *post*; section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61, *post*. At the time of going to press no such regulations have been made.

(b) **In the first instance.**—See section 5, *post*, for provisions enabling the employer to recover the contribution which he has paid on behalf of the worker. Note that by section 4, *post*, the employer cannot recover the employer's contribution from the worker even though the worker has contracted that he may do so, and that it is a criminal offence to deduct it, or to attempt to deduct it.

(c) **Insured person.**—"Insured person" means a person employed in insurable employment (see section 88 (1), *post*). As to the meaning of "insurable employment" see section 1 (2), *ante*, and note (d) thereto.

(d) **Weekly contribution shall be payable.**—This subsection lays down the general rule that if an insured person is employed for the whole or any part of a contribution week (as to which see note (e), *infra*) a weekly contribution is payable in respect of him. This is, however, subject to certain exceptions, which are as follows:—

- (i) Where no services have been rendered by an insured person during any week and either no remuneration has been paid or the insured person has been incapable of work for the whole or any part of the week due to illness, etc., no contribution is payable; section 3 (2) (b).
- (ii) In respect of mariners or airmen who are neither domiciled nor resident in the United Kingdom, regulations may be made under section 77, *post*, exempting them from payment.
- (iii) A child, as defined by section 88 (2), *post*, and his employer, are exempt from payment of contributions while the child is under the upper limit of the compulsory school age; section 79 (1).

As to who are to be treated as employers see section 80, *post*.

(e) **Contribution week.**—This means the period of seven days commencing from midnight between Saturday and Monday; see section 88 (1), *post*.

(f) **Employed.**—As to what is meant by a person being employed see note (c) to section 1, *ante*. As to which person is to be treated as the employer see section 80, *post*.

(g) **Where one weekly contribution has been paid.**—Proviso (b) to section 3 (2) ensures that in respect of each insured person only one contribution for each week is payable. The question may arise when a person changes his employment during a contribution week, but more commonly occurs in cases where a person works for more than one employer. This is frequently the case with charwomen, office cleaners, etc. In general, where an insured person is employed by more than one person during any contribution week the first person employing him is deemed to be the employer for the purposes of liability to pay the weekly contribution; section 80 (2). This is, however, subject to there being no contrary regulations applicable which prescribes some other person as the employer; see section 80 (1) and (2). See also section 80 (3).

(h) **No services or remuneration during week.**—This proviso relieves the employer and insured person from the liability to pay contributions where no services are rendered during any week provided no services are rendered during that week and no remuneration paid for any day in it except a day when the insured person is ill or does not work on that day in a normal week. A clear case of exemption from liability to pay contributions is where an insured person paid an ordinary weekly or monthly wage is absent from work on holiday without pay. There may, however, be cases in which it is difficult to say whether some part of a payment made to an insured person ought or ought not to be attributed to some particular week, even though no services were rendered during that week. Accordingly subsection (3), *ante*, provides that



regulations may be made providing that, as respects any period during which no services are rendered, payments received in prescribed circumstances are or are not to be deemed remuneration paid in respect of that period, or of any week falling wholly or partly within that period.

As to "insurable employment", see section 1, *ante*, and the First Schedule, *post*.

(i) **Incapable of work.**—These are the same words as those used in the proviso to section 24 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1083; and are not to be taken too literally. If in fact a person stays away from his work because he has a cold or is otherwise unwell he is treated as being incapable of work. In the National Health Insurance Act, 1936, section 226 (1) thereof; 29 Halsbury's Statutes 1184; defined "disease or disablement" as such disease or disablement as would entitle an insured person to sickness or disablement benefit. There is no equivalent definition in the present Act. It will be observed that, in the case of incapacity for work due to disease or disablement, or where a day is a "day off" in a normal week, no contribution is payable even though the insured person's wages are paid, provided no services at all are rendered during the week in question. Cf. sections 14 and 15, *post*.

(k) **Regulations may provide.**—No such regulations have been made at the time of going to press. As to this provision see notes (a) and (h), *supra*.

(l) **Prescribed.**—This, by section 88 (1), *post*, means prescribed by regulations. This Part of the Act deals with contributions.

(m) **Fails to pay any contribution.**—The duty to make the payments is imposed, in the first instance, on the employer (see section 3 (1), *ante*). The present subsection makes it an offence for him to fail to pay the contribution. Under a similar provision in the National Health Insurance Act, 1936, viz., section 170 (2) (a); 29 Halsbury's Statutes 1172; and the Acts which it replaced it has been held that although the employer may quite properly delegate his duties, he does so at his own risk, and will be liable to a fine if the person to whom the duties are so delegated fails to discharge them; *Godman v. Crofton* (1913), 110 L.T. 387; 44 Digest 1310, 150. The question of *mens rea* in regard to the offence created by this subsection does not appear to arise.

(n) **On summary conviction.**—By section 68 (1), *post*, proceedings cannot be instituted except by or with the consent of the Minister, or by an inspector or other officer authorised in that behalf by special or general directions of the Minister. Proceedings may be instituted within three months from the date on which evidence, sufficient in the Minister's opinion to justify prosecution, comes to his knowledge, or within twelve months after the commission of the offence, whichever period last expires; section 68 (3).

By section 36 (1) of the Act, *post*, any question, *inter alia*, whether a person is employed in insurable employment and who is liable for payment of contributions as the employer, is to be determined by the Minister, and his decision is final except that if any question of law arises in connection with such determination the Minister may refer it for decision to the High Court, and any person aggrieved by the Minister's decision in cases where he does not so refer a point of law to the High Court may appeal in respect thereof to the High Court; section 37 (1). In any proceedings for an offence in respect of the non-payment of contributions the decision of the Minister on the matters referred to above is conclusive, unless an appeal from his decision on a point of law is pending, or the time for so appealing has not expired (section 72 (1), *post*) in which latter cases the court of summary jurisdiction must adjourn the proceedings until such time as a final decision on the question has been obtained; section 72 (4), *post*. The justices have no jurisdiction at all to determine whether a person is employed in insurable employment, or any other matter which is by section 36 reserved, subject to a reference or appeal to the High Court on a point of law, for final decision by the Minister, and if in any proceedings where any such point is taken the decision of the Minister has not been obtained, and it is necessary for the determination of such proceedings, the question must be referred to the Minister for determination, as required by section 72 (3), *post*, and the proceedings be adjourned in the meantime; see *Wood v. Burke* (1927), 43 T.L.R. 582; 44 Digest 1308, 136; a case under the similar provisions of section 22 (7) of the Unemployment Insurance Act, 1920; 20 Halsbury's Statutes 675; and section 97 (4) of the National Health Insurance Act, 1924; 20 Halsbury's Statutes 554. It should be noted that *R. v. Wilberforce, Ex parte National Insurance Commissioners*, [1916] 1 K.B. 239; 44 Digest 1314, 173, which decided that under the National Health Insurance Act, 1911 the jurisdiction of the justices was not ousted by a provision that the Insurance Commissioners should decide certain questions, has no application to the provisions of the present Act in view of the specific requirements of section 72 thereof.

It should be noted that if an application is made to justices for the issue of a summons against an employer for failure to pay contributions such issue ought not to be refused on the ground that the insured person is the primary delinquent, and that a summons ought to be issued against him as well as the employer; *R. v. Mead, Ex parte National Health Insurance Commissioners* (1916), 85 L.J.K.B. 1065; 44 Digest 1314, 175.

When the conviction is against a body corporate, and it is proved that the offence



is committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary, or other officer, he as well as the body corporate is deemed guilty of the offence, and is liable to be proceeded against and punished accordingly; see section 67 (3), *post*.

(o) **Fine not exceeding ten pounds.**—The employer on conviction, is liable to pay to the Industrial Injuries Fund a sum equal to the amount which he has failed to pay (section 69 (1), *post*), and, if notice of intention to do so has been served with the summons, evidence may be given of the employer's failure, during the two years preceding the date of the offence, to pay other contributions (in respect of the same or other persons employed by him) and on proof of such failure the employer is liable to pay to the Industrial Injuries Fund a sum equal to the total of all the contributions which he has failed to pay (section 69 (3), *post*), and the court which convicts may order such sums to be paid, and such sums are then recoverable as penalties (section 69 (5)) and, in the case of bodies corporate, on failure to pay, as respects any unpaid portion, this becomes a debt due jointly and severally from any of the directors who knew, or could reasonably be expected to have known, of the failure to pay the contributions; section 69 (7). Such an order to pay made on summary conviction does not prevent the institution of civil proceedings to recover other unpaid contributions in respect of the same employee; see section 69 (8), *post*, and *Att. Gen. v. Paine*, [1928] 1 K.B. 9; 44 Digest 1308, 139.

(p) **Parts III and IV of the Second Schedule.**—See this Schedule, *post*, and notes thereto.

#### 4. Employer's contribution irrecoverable from insured person.

—(1) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages or other remuneration of, or otherwise to recover from, the insured person the employer's contribution.

(2) If an employer deducts or attempts to deduct (a) from the wages or other remuneration of an insured person the whole or any part of the employer's contribution, he shall be liable on summary conviction (b) to a fine not exceeding ten pounds.

#### NOTES

**General effect of section.**—A provision similar to that contained in this section has been inserted in all the National Health Insurance, Widows' Pension, and Unemployment Insurance Acts, including the first National Insurance Act, 1911: see e.g., section 25 (2) and 170 (2) (b) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1083, 1172. See now, section 6 (2) of the National Insurance Act, 1946. Apart from this provision prohibiting contracts or arrangements being made under which the insured person would ultimately reimburse the employer the whole sum which he had paid in the first instance it would be easy to evade the intention of the Act, which is that there should be equal contributions.

(a) **Deducts or attempts to deduct.**—This prohibition against deducting or attempting to deduct the employer's contribution from the insured person's wages or other remuneration applies whether or not such deduction or attempted deduction is in pretended reliance on a contract to that effect or not.

(b) **Liable on summary conviction.**—Proceedings cannot be instituted except by or with the consent of the Minister or by an inspector or other officer authorised in that behalf by the Minister by special or general directions; section 68 (1), *post*. As to offences by bodies corporate see section 67 (3), *post*. As to the time within which prosecutions must be brought see section 68 (3) and (4), *post*.

#### 5. Recovery by employer of insured person's contributions.—

(1) Subject to the provisions of this section, and subject to any regulations (a), the employer shall be entitled to recover from the insured person in accordance with the provisions of this section (b) the amount of any contributions paid or to be paid by him on behalf of that person:

Provided that the amount of any contribution not yet paid shall not be recoverable except under and in accordance with the next following subsection.

(2) Where the insured person receives any wages or other pecuniary remuneration from the employer, the amount of any contribution paid or to be paid by the employer on behalf of the insured person shall, notwithstanding the provisions of any Act (c) or any contract to the contrary, be recoverable by means of deductions from the wages of that person or from any other remuneration due from the employer to that person and not otherwise (d):



Provided that—

- (a) no such deduction may be made from any wages or remuneration other than such as are paid wholly or partly in respect of the contribution week (e) or part of the contribution week for which the contribution is payable or may become payable, as the case may be ;
- (b) no such deduction may be made of any contribution not yet paid except where it is not payable until after the date when the said wages or remuneration are paid.

(3) Where the insured person does not receive any wages or other pecuniary remuneration from the employer (f), but receives such remuneration from some other person, the amount of any contribution paid by the employer on behalf of the insured person shall (without prejudice to any other means of recovery) be recoverable from the insured person summarily as a civil debt (g), if proceedings for the purpose are instituted within three months from the date on which the contribution was payable.

(4) Where the insured person does not receive any wages or other pecuniary remuneration either from his employer or from any other person, the employer shall be liable to pay the contributions payable both by himself and the insured person and shall not be entitled to recover any part thereof from the insured person (h).

#### NOTES

**General effect of section.**—This section, which has had its equivalent in all the National Health, Unemployment, and Contributory Pensions Acts, enables the employer, who, in accordance with the provisions of section 3 of the Act, *ante*, has paid the insured person's contribution in the first instance as well as his own contribution, to recover the insured person's contribution from him by, in most cases, deducting it from the wages paid to such person. The right to recover the insured person's contribution exists only where the conditions prescribed by section 5 and by any regulations which may be made thereunder, are complied with. Cf. section 6 (3) of the National Insurance Act, 1946.

(a) **Subject to any regulations.**—" Regulations " by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61, *post*. At the date of going to press no regulations under this section have been made.

(b) **In accordance with the provisions of this section.**—The employer is not given a general right to recover the insured person's contribution, but merely a limited right which must be exercised in accordance with the conditions prescribed by the present section. Otherwise the employer forfeits his right to recover contributions. Thus, for example, if the employer fails altogether to pay the weekly contribution, in addition to committing an offence under section 3 (4), *ante*, he is liable to pay both his own and the insured person's contributions which are in arrear.

(c) **Notwithstanding the provisions of any Act.**—The reference, apparently, is to the Truck Acts, 1831 to 1940 ; 8 Halsbury's Statutes 492, 504, 513 ; 33 Halsbury's Statutes 139.

(d) **By means of deductions . . . . . and not otherwise.**—The provisos to both subsections (1) and (2) are important. In the first place the insured person's contribution cannot be deducted until the employer has actually paid the contribution except in cases where the insured person's wages for the contribution week in respect of which the deduction is to be made are payable before the contribution is payable : as to the dates when contributions are payable see section 65, *post*, under which regulations are to be made for prescribing times of payment etc.

In the second place the deduction can only be made from wages or other remuneration due, wholly or in part, in respect of the contribution week or part of the contribution week for which the contribution is payable. See also next note.

(e) **Contribution week.**—This, by section 88 (1), *post*, means the period of seven days commencing from midnight between Sunday and Monday.

(f) **Where the insured person does not receive wages from his employer.**—There are cases where A may be employed by B and may not receive money from him, although receiving money from other persons. This would cover waiters remunerated



solely by gratuities. In such cases the employer must pay the contribution in the first instance, and is entitled, after paying it, to recover from the insured person his share of the contribution.

(g) **Recoverable summarily as a civil debt.**—As to the recovery of sums summarily as a civil debt see 21 Halsbury's Laws (2nd Edn.) 632-633 and section 35 of the Summary Jurisdiction Act, 1879; 11 Halsbury's Statutes 342. It will be observed that if this procedure is followed, the summons must be issued within three months from the date on which the contribution was payable. As, however, this method of recovery is to be "without prejudice to any other means of recovery", and as the three months limit does not qualify these words, it appears that an ordinary civil action in the county court could be brought to recover the contributions at any time within six years of the date when the contributions become payable; see section 2 (1) (d) of the Limitation Act, 1939; 32 Halsbury's Statutes 225. See also section 70 (1), *post*.

(h) **When no remuneration is paid by anyone.**—The cases in which, under the Act, a person is treated as being employed by another although not paid any remuneration by him or anyone else will chiefly occur under paragraphs 4 and 8 of Part I of the First Schedule, *post* (employment as member of crew of lifeboat controlled by Royal National Lifeboat Institution: members of fire and rescue brigades etc.). In all such cases the employer must pay the whole contribution and cannot recover any of it from the insured person. As to the determination of who is the employer in such cases see section 80, *post*, under which regulations may be made prescribing who is to be treated as the employer, and section 36 (1) (a) (iii) under which any question as to who is liable as being the employer is to be determined by the Minister, subject to a reference or an appeal on a point of law to the High Court under section 37, *post*.

## 6. Consequential amendment of enactments relating to minimum wages.—In the following enactments, that is to say—

- (a) subsection (2) of section six of the Road Haulage Wages Act, 1938 (a);
- (b) subsection (1) of section ten of the Catering Wages Act, 1943 (b); and
- (c) subsection (1) of section thirteen of the Wages Councils Act, 1945 (c);

(which provide among other things that, for the purpose of seeing whether a person's remuneration is less than the minimum provided for by those Acts, his remuneration shall be calculated before deduction of his contributions for unemployment insurance and national health insurance), there shall after the words "the National Health Insurance Act, 1936" (d), or "the National Health Insurance Acts, 1936 to 1941" (e), as the case may be, be inserted the words "the National Insurance (Industrial Injuries) Act, 1946" (f).

## NOTES

**General effect of section.**—This section was introduced in Committee as a Ministerial New Clause. The effect of it is to include contributions under this Act among those which, by certain subsections of named Acts, may be deducted from an employee's wages before calculating the minimum wage provided for by those Acts. As to contributions payable under this Act, see sections 2-5, *ante*, and the Second Schedule, Part I, *post*. This section is the same as section 6 (4) of the National Insurance Act, 1946.

(a) **Section 6 (2) of the Road Haulage Wages Act, 1938.**—For this subsection, see 31 Halsbury's Statutes 688.

(b) **Section 10 (1) of the Catering Wages Act, 1943.**—For this subsection, see 36 Halsbury's Statutes 317.

(c) **Section 13 (1) of the Wages Councils Act, 1945.**—For this Act, see 30 Statutes Supp. 38.

(d) **National Health Insurance Act, 1936.**—For this Act, see 29 Halsbury's Statutes 1064 *et seq*.

(e) **National Health Insurance Acts, 1936 to 1941.**—For the meaning of this expression, see section 12 (1) of the National Health Insurance, Contributory Pensions and Workmen's Compensation Act, 1941; 34 Halsbury's Statutes 446.

(f) **The National Insurance (Industrial Injuries) Act, 1946.**—This is the short title of this Act. See section 91, *post*.



PART II

BENEFIT

*Description of benefit and general conditions thereof*

**7. Right to and description of benefit.**—(1) Subject to the provisions of this Act (*a*), where an insured person (*b*) suffers personal injury (*c*) caused on or after the appointed day (*d*) by accident arising out of and in the course of his employment (*e*), being insurable employment (*f*), then—

(a) industrial injury benefit (*g*) (in this Act referred to as "injury benefit") shall be payable to the insured person if during such period as is hereinafter provided (*h*) he is, as the result of the injury (*i*), incapable of work (*k*);

(b) industrial disablement benefit (*l*) (in this Act referred to as "disablement benefit") shall be payable to the insured person if at a time not falling within the said period he suffers, as the result of the injury, from such loss of physical or mental faculty as is hereinafter provided (*m*);

(c) industrial death benefit (*n*) (in this Act referred to as "death benefit") shall be payable to such persons as are hereinafter provided if the death of the insured person results from the injury (*o*).

(2) In this Act references to loss of physical faculty shall be construed as including references to disfigurement (*p*), whether or not accompanied by any actual loss of faculty.

(3) Subject to the provisions of Part VI of this Act relating to persons on ships and aircraft (*q*), benefit shall not be payable in respect of an accident happening while the insured person is outside Great Britain (*r*).

(4) For the purposes of this Act, an accident arising in the course of an insured person's employment shall be deemed, in the absence of evidence to the contrary (*s*), also to have arisen out of that employment (*t*).

NOTES

**General effect of section.**—This is the section which sets out the kinds of benefit to be derived from insurance under the Act by workers who are insured persons within Part I, *ante*. Cf. section 10 of the National Insurance Act, 1946.

The benefits are—

(a) **Injury benefit**, payable while the insured person is incapable of work as a result of the injury, for a period of 156 days from the accident (excluding Sundays), known as the injury benefit period;

(b) **Disablement benefit**, payable thereafter for disability assessed on a percentage basis and taking the form either of a pension or gratuity, with allowances for children or dependants;

(c) **Death benefit**, payable to widows, widowers, children or dependants if the insured person's death results from the injury.

Injury benefit is designed to cover the initial period of incapacity due to the injury. Disablement benefit will be in proportion to the degree of the insured person's disablement; "in other words, in proportion to his loss of health, strength and power to enjoy life; and it will be awarded irrespective of his earnings or his notional earnings. The disabilities which will be regarded as attracting a pension of 100 per cent. are left to be prescribed. The whole industrial injuries scheme has been framed with the war pensions scheme in mind, and we shall, in making the regulations, be influenced by the schedule of assessment used by the Ministry of Pensions. . . . We shall not be bound by the Ministry of Pensions schedule, but shall vary it if need be. The regulations which I shall make will be submitted to the Industrial Injuries Advisory Council . . .": the Minister of National Insurance, moving the Second Reading of the Bill on October 10, 1945 (414 H. of C. Official Report 277). For the schedule of assessment of the Ministry of Pensions, see Royal Warrant of 1946, Cmd. 6799, First Schedule. As to minor injuries, see Third Schedule. As to the Industrial Injuries Advisory Council, see section 61, *post*.

As to payment of benefit, see section 27, *post*.

By section 28, *post*, every assignment of or charge on benefit, and every agreement to assign or charge benefit, is void. Benefit does not pass to a trustee in bankruptcy.

It will be noticed that proviso (a) to section 1 (1) of the Workmen's Compensation Act, 1925; Willis, 6; has not been reproduced in this Act. This was the proviso which disallowed compensation if it was proved that the injury to a workman was



attributable to his "serious and wilful misconduct", unless the injury resulted in "death or serious and permanent disablement". The omission is deliberate. It was considered that the proviso penalised workmen in cases where the results were slight or temporary, that it was a source of irritation and that it could be omitted, having regard to what still has to be proved under the section (see 414 H. of C. Official Report 271).

It has been decided that the mere fact that a servant receives benefits under the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1064; does not deprive him of his right to wages during illness, if he is otherwise entitled to such wages; *Marrison v. Bell*, [1939] 2 K.B. 187, C.A.; [1939] 1 All E.R. 745; Digest Supp.; explained in *O'Grady v. Saper (M.), Ltd.*, [1940] 2 K.B. 469, C.A.; [1940] 3 All E.R. 527; Digest Supp. From the reasoning of the Court of Appeal it would appear that the same is true of benefit under this section. The benefit is based on disability, not on earnings, a distinction which was drawn in *Marrison v. Bell*, *supra*, with regard to workman's compensation, following other authorities. *Marrison v. Bell*, *supra*, was also explained, apart from the National Health Insurance Act, in *Petrie v. Mac Fisheries, Ltd.*, [1940] 1 K.B. 258; [1939] 4 All E.R. 281; Digest Supp.

So, too, an insured person's rights at Common Law in respect of his injury are unaffected; 404 H. of C. Official Report 1404; Cmd. 6551, paragraph 52.

Alternative remedies have been fully considered by the Departmental Committee under Sir Walter Monckton in its two interim reports and a final report (Cmd. 6580, 6642, 6860) which are referred to in more detail in the General Introduction, Part I, *ante*, under the heading "Alternative remedies". Benefit under this Act is apparently not liable to income tax. See section 27 of the Finance Act, 1946.

(a) **Subject to the provisions of this Act.**—There are a number of limitations on the right to benefit. These are mostly contained in this Part of the Act. As to the determination of questions and claims, see Part III, *post*. Benefit does not depend upon the number of contributions paid. Cf. the National Insurance Act, 1946, section 10 (2) (b) and Third Schedule. The Acts repealed by that Act also had statutory conditions for the payment of benefit, which included the payment of contributions.

(b) **Insured person.**—This means a person employed in insurable employment (see section 88 (1), *post*). As to the meaning of "insurable employment", see section 1 (2), *ante*, and note (d) thereto.

(c) **Personal injury . . . by accident.**—These words are used in the Workmen's Compensation Act, 1925, section 1 (1); Willis, 6; and were used in the earlier Acts. The cases decided on the meaning of the words are set out in Willis, pp. 8-14. See note (e) to section 1, *ante*. As to diseases, see Part IV of the Act, *post*.

(d) **Appointed day.**—This means such day as the Minister of National Insurance may by order appoint (see section 88 (1), *post*). No day has been appointed at the time of going to press.

(e) **Accident arising out of and in the course of his employment.**—These also are the words used in the Workmen's Compensation Act, 1925, section 1 (1); Willis, 6. As to the reason for retaining these words in the present Act, see notes (e) and (g) to section 1, *ante*. The cases decided on the meaning of the words in the Workmen's Compensation Act are collected on pp. 8 to 150 of Willis, and are clearly relevant.

(f) **Insurable employment.**—See note (d) to section 1, *ante*, and Schedule I, Part I, and notes thereto, *post*.

(g) **Industrial injury benefit.**—The word "industrial" is not defined in the Act. The long title of the Act makes no mention of it and it is clear from the general scope of the Act that the use of the word in the short title and elsewhere does not confine the injuries to those suffered in "industry" in its generally accepted sense. As to "injury", see note (c), *supra*. As to diseases, see Part IV, *post*. "Benefit" means, unless the context otherwise requires, benefit under this Act (section 88 (1), *post*). As to the entitlement to injury benefit, see section 11, *post*.

(h) **During such period as is hereinafter provided.**—The period is provided by section 11, *post*, and is called the "injury benefit period".

(i) **As the result of the injury.**—This is a medical question, to be determined by a medical board or medical appeal tribunal under section 36 (1), *post*. For decisions on the words "where death results from the injury" in section 8 (1) of the Workmen's Compensation Act, see Willis, 237-246, 273-274. The two phrases are similar enough in wording and context to justify reference to those decisions on the meaning of "result". See note (o), *infra*.

(k) **Incapable of work.**—See note (e) to section 11, *post*. See also note (d) to section 13, *post*. Cf. "incapable of self-support" in section 35 (5), *post*.

(l) **Industrial disablement benefit.**—This is the benefit which is payable to an insured person who is still or becomes disabled after the end of the injury benefit period (section 12, *post*). As to the injury benefit period, see section 11, *post*. The word "disablement" brings into the Act the method of assessing the results of injury adopted by the Royal Warrant of 1946 as to Service pensions (see General note, *supra*). "Disablement" is defined by paragraph 1 (4) of the Royal Warrant as meaning "physical or mental injury or damage, or loss of physical or mental capacity". As to its assess-



ment for the purposes of this Act, see section 12, *post*. "Benefit" means, unless the context otherwise requires, benefit under this Act (section 88 (1), *post*). In the Beveridge Report (Cmd. 6404) (paragraph 320) "benefit" is defined as a weekly payment continued as a rule so long as the need lasts, but sometimes given for a limited time only (e.g., for training or maternity.)

(m) **Such loss of physical or mental faculty as is hereinafter provided.**—See note (p) to subsection (2), *infra*, and see section 12, *post*. "Relevant loss of faculty", which occurs in the Act, means the loss of faculty resulting from the relevant injury. See section 88 (1), *post*, as to the meaning of these expressions.

(n) **Industrial death benefit.**—Benefit means, unless the context otherwise requires, benefit under this Act (section 88 (1), *post*.)

(o) **Shall be payable to such persons as are hereinafter provided.**—See sections 19–24, *post*. As to when death "results from" the injury, see the decisions on the words "where death results from the injury" in section 8 (1) of the Workmen's Compensation Act; Willis, 237–246, 273–274.

(p) **Disfigurement.**—This means the fact or condition of being disfigured; defacement, deformity; to disfigure being to mar the figure or appearance of; to deform, deface; Shorter Oxford English Dictionary, 2nd Edn., 1936. "Disfigurement" was substituted for "personableness" by a Government amendment in the House of Lords, as being an equally comprehensive and more suitable word. The Minister, on the consideration of the Lords' amendments in the House of Commons, gave a complete assurance that it was in no way narrower than "personableness" (426 H. of C. Official Report 347). "Personableness" is defined in the Oxford Dictionary as meaning "personal handsomeness"; "personable" as meaning "having a well-formed person; handsome; presentable". The subsection gives a right to benefit to persons who suffer disfigurement without loss of faculty, e.g., by facial scars, burns, etc., a right not given by the Workmen's Compensation Act. Note that disfigurement is only one form of loss of physical faculty, as to which generally, see section 12, *post*.

(q) **Mariners and Airmen.**—See section 77 (1), *post*.

(r) **Outside Great Britain.**—"Great Britain" presumably means England, Wales and Scotland, the Isle of Man and Channel Islands, and the territorial waters thereof. By section 5 of the Sea Fisheries Act, 1868; 8 Halsbury's Statutes 690; for example, "Great Britain and Ireland" and "United Kingdom" as used in the First Schedule of that Act were to be construed to mean the "British Islands", that is the United Kingdom of Great Britain and Ireland, the Isle of Man, the Islands of Guernsey, Jersey, Alderney and Sark, and their dependencies. The Act applies to England and Wales, and to Scotland (section 90, *post*), but not to Northern Ireland (section 91, *post*). As to territorial waters, see Territorial Waters Jurisdiction Act, 1878, section 7; 4 Halsbury's Statutes 695 (one marine league from low-water mark; "the three-mile limit"). See also Willis 7.

(s) **"Shall be deemed . . ."** **Burden of proof.**—This subsection makes an important change in the law. Under the Workmen's Compensation Act, 1925, section 1 (1); Willis 6; the workman had to prove that the accident arose both out of and in the course of the employment. Now, though the burden of proving that the accident arose in the course of the employment remains on the claimant for benefit, the onus of proving that it did not arise out of the employment, so as to disentitle the claimant to benefit, will rest on the insurance officer in the first instance. The Minister will presumably direct that this burden shall not be undertaken by his officers in cases of genuine doubt, leaving to the claimant the benefit of the doubt. Many of these doubtful cases, where the workman has failed to discharge the burden of proof, have been fatal cases, in which there was no witness of the death. See the remarks of the Minister of National Insurance (414 H. of C. Official Report 271). As to insurance officers, see section 44, *post*. As to determination of claims, see section 36 (2), *post*. For cases on the burden of proof under the Workmen's Compensation Act, see Willis 116 *et seq*. It is only for the purposes of this Act that the accident is deemed to arise out of the employment. Thus if the insured person wishes to bring an action at Common Law, he must prove whatever facts may be necessary to give him a cause of action.

The expression "shall be deemed to", as used in this and many other statutes, is by now well understood. It creates a "statutory fiction . . ." for the purpose of extending the meaning of some term to a subject-matter which it does not properly designate. When used in that sense, it becomes very important to consider the purpose for which the statutory fiction is introduced". *Per* GRIFFITH, C.J., in *Muller v. Dalgely and Co., Ltd.* (1909), 9 C.L.R. 693, at p. 696. See also *R. v. Norfolk County Council* (1891), 60 L.J.Q.B. 379, D.C.; 26 Digest, 267, 74 (reported in Digest on another point), where CAVE, J., said, at p. 380, "Generally speaking, when you talk of a thing being deemed to be something, you do not mean to say that it is that which it is to be deemed to be. It is rather an admission that it is not what it is to be deemed to be, and that, notwithstanding it is not that particular thing, nevertheless, for the purposes of the Act, it is to be deemed to be that thing".

In this Act the expression "treated" is used in conjunction with the expression "deemed" (e.g., in section 88 (2), *post*), and apparently means that a person shall be



given certain privileges or liabilities, without any resort to the "statutory fiction" mentioned above. The contrast is deliberate and "deemed" would appear to be intended to have wider consequences than "treated". "Deemed" means for all the purposes of the Act; "treated" means for the limited purposes expressed.

(*t*) **Evidence to the contrary.**—What evidence is to be admitted by the various officers and tribunals administering the Act will be laid down by Regulations made under section 51, *post*. It seems probable, from the general scheme of the Act, that the rules of evidence as applied in the Courts will be considerably relaxed, though evidence on oath is contemplated by section 51 (2). No regulations have been made under section 51 at the time of going to press.

**8. Accidents happening while acting in breach of regulations, etc.**—An accident (*a*) shall be deemed to (*b*) arise out of and in the course of an insured person's employment, notwithstanding that he is at the time of the accident acting in contravention of any statutory or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer (*c*), if—

- (*a*) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and
- (*b*) the act is done for the purposes of and in connection with the employer's trade or business (*d*).

#### NOTES

**General effect of section.**—This section brings into the Act accidents happening while acting in breach of regulations, etc. It is based on section 1 (2) of the Workmen's Compensation Act, 1925; Willis 6; with the important differences (*a*) that the words "resulting in the death or serious and permanent disablement of a workman" are omitted and (*b*) that the condition or proviso (*a*) is inserted. The reason for omitting the words is to avoid penalising a slightly or temporarily injured person and thereby causing irritation (see 414 H. of C. Official Report 272; see also general note to section 7, *ante*). The condition (*a*) seems to have been put in to make it clear that even in cases of breach of regulations, etc. it must still be proved that the accident would have arisen "out of and in the course of" the employment, but for the breach. One would have expected the condition to have read "the accident would have so arisen had the act not been done in contravention . . ." Condition (*b*) reproduces the words of section 1 (2) of the Workmen's Compensation Act, 1925. Save for those decided on the omitted words, the authorities applying section 1 (2) of the Workmen's Compensation Act are still relevant. They are collected in Willis 44 *et seq.* The most important recent case on section 1 (2) of the Workmen's Compensation Act is *Noble v. Southern Railway Co.*, [1940] A. C. 583; [1940] 2 All E.R. 383; 33 B.W.C.C. 176; Digest Supp.

(*a*) **Accident.**—See note (*e*) to section 1, *ante*, and the cases collected in Willis 8 *et seq.*

(*b*) **Shall be deemed to.**—See note (*s*) to section 7, *ante*.

(*c*) **Contravention of regulations or orders.**—See cases collected in Willis 44 *et seq.* "Insured person" means a person employed in insurable employment (section 88 (1), *post*). As to "employer" and "insurable employment", see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*.

(*d*) **Employer's trade or business.**—See cases collected in Willis 94 *et seq.* See also section 10, *post*. See also First Schedule, Part II (5) and (7) and note (*f*) thereto. Note that conditions (*a*) and (*b*) of this section are cumulative and not alternative. The accident must be one which would have arisen "out of and in the course of" the employment but for the contravention or lack of instructions and also the act must have been done for the purposes of and in connection with the employer's trade or business. It is difficult to see how any act done for the purposes of the trade or business can fail to be done in connection with it. It is provided by section 88 (6), *post*, that for the purposes of this Act the exercise and performance of the powers and duties of a public or local authority shall be treated as the trade or business of the authority. This substantially reproduces section 48 (2) of the Workmen's Compensation Act, 1925; Willis 650; though there the wording was "a local or other public authority". No definition of these terms is given in either Act but they probably include all authorities deriving powers or duties from public or local statutes. See Willis 650 and the authorities there cited. See also note (*t*) to First Schedule, Part I, *post*. There is no similar provision to bring Crown employees (see section 76, *post*) within this section.

**9. Accidents happening while travelling in employer's transport.**—(1) An accident (*a*) happening while an insured person is, with the express or implied permission of his employer (*b*), travelling as a



passenger by any vehicle (c) to or from his place of work (d) shall, notwithstanding that he is under no obligation to his employer (e) to travel by that vehicle, be deemed to arise out of and in the course of his employment (f), if—

- (a) the accident would have been deemed so to have arisen had he been under such an obligation (g); and
- (b) at the time of the accident, the vehicle—
  - (i) is being operated by or on behalf of his employer (h) or some other person by whom it is provided in pursuance of arrangements made with his employer (i); and
  - (ii) is not being operated in the ordinary course of a public transport service (k).

(2) In this section references to a vehicle include references to a ship, vessel or aircraft (l).

#### NOTES

**General effect of section.**—This section deals with accidents happening while travelling in the employer's transport. There was no section in the Workmen's Compensation Act, 1925, similar to this one. In the past, cases such as are now covered by this section only gave the workman a right to compensation where there was a contractual obligation on his part to use the transport provided by his employer. This rule was the result of a number of decisions, collected in *Willis 27 et seq.*, and is based on the necessity, as the law then stood, of proving that the journey to and from work was a part of the employment. This state of affairs was perhaps justifiable when compensation was payable by the employer, but obviously could not be justified in any scheme of State insurance. The reason for excepting journeys made in vehicles being operated in the ordinary course of a public transport service is that in such cases the insured person runs no greater risk than do the general public using the same service and there is no reason why, if there is an accident, there should be different rates of benefit paid to different passengers according to the reasons why they are using the vehicle.

The section was much discussed in Committee and on the Report Stage, especially on the question whether insured persons were covered when waiting for a vehicle, how far they should be covered on their journeys to and from work, and whether a bicycle was a "vehicle" and, if so, "operated etc.". The words "as a passenger" in subsection (1) were put in by the Government to make it quite clear that this section did not cover an insured person who was driving. He would in any case be covered because the driving would be in the course of his employment (see sections 1 and 7 (4), *ante*). This section is put in as additional cover to that given by the Act in general and was put in mainly because of the decision in *St. Helen's Colliery Co. v. Hewitson*, [1924] A.C. 59; 16 B.W.C.C. 230; 34 Digest 280, 2364; *Willis 28* and other pages; under which workmen so travelling were held not to be entitled to compensation. Bicycles are intentionally excluded from the section. It was pointed out for the Government that a line had to be drawn somewhere. As regards men standing in a queue waiting for a bus, with members of the public, they might well not be covered. In *Weaver v. Tredegar Iron & Coal Co., Ltd.*, [1940] A.C. 995; [1940] 3 All E.R. 157; 33 B.W.C.C. 227; Digest Supp.; *Willis 30*; the workman recovered compensation, but the railway platform on which he was standing waiting for a train was exclusively used by the colliery company, though owned and controlled by the railway company. This was something different from standing in a queue with members of the public. Pit-head baths belonging to the Miners' Welfare Commission are part of the employer's premises in every case, so that men waiting outside them for a bus will be covered.

(a) **Accident.**—See notes (e) and (g) to section 1, *ante*, and the cases collected in *Willis 8 et seq.*

(b) **With the express or implied permission of his employer.**—This is a question of fact in each case. Permission may arise from words spoken by the employer, from notices put up in the place of work stating that transport will be provided, from the fact that the employer provides transport or from the fact that the employer knowingly acquiesces in his employee travelling in some vehicle, such as the car of a fellow-servant or a vehicle provided by an employer at another factory, provided it is not a public service vehicle. The fact that the use of the vehicle is entirely optional no longer prevents the insured person from recovering. The words "with the . . . permission of" the employer have replaced the words "in discharge of some contractual duty owed to" the employer, which were part of the old rule built up by a series of decisions, a duty which was said to result either from express or implied directions (cf. "permission") given by the employer or by reason of the workman being at the time under the control of the employer, or by reason of some proved necessity to use the provided means of transport as being the only means for getting to and from work. "Insured person", by section 88 (1), *post*, means a person employed in insurable employment, as



to which, and as to "employer", see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*.

(c) **Travelling as a passenger by any vehicle.**—"Travelling by" was much discussed in Committee on the question whether it included waiting for a vehicle, e.g. in a queue. It obviously includes waiting in a vehicle for it to start. The words "as a passenger" were added on the Report Stage. See General note, *supra*, for further comment on this phrase.

A statutory definition of "vehicle" for the purposes of that Act is found in section 12 of the Weights and Measures Act, 1936; 29 Halsbury's Statutes 1030. It there means "any lorry, cart, waggon, truck or other means of conveying sand or ballast by land, however drawn or propelled, but does not include a railway truck or waggon". That is of course a definition for special, limited purposes. In the present section it will obviously include a car or omnibus. Bicycles, though they may be vehicles, do not appear to be within the scope of this section at all.

(d) **To or from his place of work.**—"Place of work" in this section would appear to have a wider meaning than the actual place where a person works, e.g. his office or lathe, and to include premises under his employer's control (see Willis 30 *et seq.*). If the insured person is out working on a job for the time being, e.g. building a house, his place of work will be the house or, if his duties also take him there, his employer's premises. On his journeys to or from or between these two places he will be covered by this subsection.

It is to be noticed that the subsection makes no mention of the other end of the journey to or from the place of work. This is deliberate, and provides for the case where the insured person does not come from or go to his home and where he is travelling between his employer's premises and his actual place of work.

(e) **Obligation to his employer.**—This means a contractual duty, expressed or implied, such as is discussed in note (b), *supra*. It means a legal obligation which is one of the terms of his contract of service.

(f) **Be deemed to arise, etc.**—For the effect of the words "be deemed to", see note (s) to section 7, *ante*. As to the whole phrase, see note (g) to section 1, *ante*, and cases collected in Willis 20 to 150.

(g) **Effect of condition (a).**—This condition seems to have been put in to make it clear that it must still be proved that the accident was one which would have been covered by the old law (as to which, see note (b), *supra*). As in the case of condition (a) to section 8 (see General note to section 8, *supra*), one would have expected to find the words "would have so arisen" instead of those actually used.

(h) **Being operated by or on behalf of his employer.**—These words cover both the case of the employer's own vehicle, such as his own car driven by himself, and of the vehicle being driven by his servant or agent. The word "operating" appears in connection with road vehicles in s. 75 (1) of the Road Traffic Act, 1930; 23 Halsbury's Statutes 664; and "operated" in section 78 (1); 23 Halsbury's Statutes 665. The words "operating" and "run" both appear in section 101; 23 Halsbury's Statutes 678; and, it is suggested, are virtually synonymous. "Operated" includes both the driving of the vehicle and all operations necessarily incidental thereto, such as waiting for passengers or turning round, and will cover anything done by the conductor (if any) of the vehicle or crew of a vessel or aircraft in the course of their duties.

(i) **Some other person, etc.**—These words cover the case of the independent contractor who provides transport by arrangement with the employer. The word "arrangements" is probably chosen as a neutral word, to cover cases in which there is no legally binding contract between the employer and the independent contractor. The words also cover the operation of a vehicle by the servant or agent of an independent contractor. If an insured person is taken ill (not "arising out of his employment") and is sent home by his employer in a cab or hired car, it would appear to be a question of fact whether there were "arrangements made with his employer" or not. If the employer merely called the cab or hired car personally or by his servant or agent, the arrangement would presumably be made with the insured person; but if the insured person was left to pay for the cab or hired car the arrangement might well be held to be with him, so as to disentitle him to benefit in the event of an accident during the journey.

(k) **Not in ordinary course of a public transport service.**—Note that condition (b) (ii) is additional to condition (b) (i), so that both must be satisfied in addition to condition (a) to entitle the insured person to benefit. "Public transport service" is a general phrase, chosen to cover all forms of public conveyance, but the word "service" connotes some sort of regular schedule of operation, it is suggested, either as to time or place or both, and does not cover vehicles such as cabs. "The ordinary course" is put in to exclude the right to benefit where an insured person is travelling as a member of the public, availing himself of the ordinary service provided for them, in which case it is intended that he should have no greater rights than they. It does not exclude benefit in a case where the transport, though provided by a public transport service organisation, such as a bus company, is a special vehicle provided by



arrangement and not part of their regular service provided for the public. A public transport service is one operated by public service vehicles; a public service vehicle is defined by section 121 (1) of the Road Traffic Act, 1930; 23 Halsbury's Statutes 686; as meaning a motor vehicle used for carrying passengers for hire or reward other than a vehicle which is a contract carriage within the meaning of that Act adapted to carry less than eight passengers or a tramcar or trolley vehicle (expressions also defined in that section). By section 61 (1); *ibid.* 654; public service vehicles are divided into stage carriages (the ordinary omnibus), express carriages (the long-distance omnibus) and contract carriages (the hired omnibus or car).

(l) **Ship, vessel or aircraft.**—None of these words is defined. By section 742 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 411; "ship" includes every description of vessel used in navigation not propelled by oars, and "vessel" includes any ship or boat or any other description of vessel used in navigation. As to the cases which decide what are ships or vessels, see Halsbury's Laws (2nd Edn.) 173-175. "Aircraft" is defined in the Air Navigation (Consolidation) Order, 1923; S. R. & O. 1923 No. 1508; as including all balloons, whether fixed or free, kites, gliders, airships, and flying machines. Each of these terms is further defined and "flying machine" includes all heavier-than-air propelled aircraft.

**10. Accidents happening while meeting emergency.**—An accident (a) happening to an insured person (b) in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business (c) shall be deemed to (d) arise out of and in the course of his employment (e) if it happens while he is taking steps (f), on an actual or supposed emergency (g) at those premises, to rescue, succour or protect (h) persons who are, or are thought to be or possibly to be, injured or imperilled (i), or to avert or minimise serious damage to property (k).

#### NOTES

**General effect of section.**—This section relates to accidents happening while meeting emergencies. There was no similar provision to this in the Workmen's Compensation Act. Under the authorities (see Willis 74) a workman was not treated as acting beyond the sphere of his employment if, whilst engaged in his employment and on his employer's work, he voluntarily did upon an emergency an act in the interests of his employer outside the scope of his ordinary employment. But if the act was one of rescue, the person whose rescue was attempted had to be a fellow workman. If he was a stranger to the rescuer's employment, no compensation was recoverable: *Jones v. Tarr*, [1926] 1 K.B. 25, C.A.; 18 B.W.C.C. 386; 34 Digest 293, 2446; Willis 81.

In this section there is no such limitation, and the right to benefit is no longer limited to accidents happening "in or about any premises used for the purposes of his employer's trade or business". There was considerable discussion in Committee on these words as applied to workmen working out on jobs, and the section was amended on the Report Stage to cover such men, section 10 being an amplification, a supplementation of section 7, *ante*, extending benefit to cases not otherwise "arising out of and in the course of". This intention seems to be carried out by the Act, inasmuch as there is nothing in either section which makes them mutually exclusive. "Subject to the provisions of this Act" in section 7, *ante*, does not have this effect.

The voluntary assumption of risk is recognised at Common Law as being justified, so as not to prevent a plaintiff from recovering, in cases where he is under a legal duty to protect property, e.g. his master's (*D'Urso v. Sanson*, [1939] 4 All E.R. 26; Digest Supp.; night watchman going back into burning premises), or a moral duty to save others from apprehended peril (*Haynes v. Harwood*, [1935] 1 K.B. 146, C.A.; Digest Supp.; policeman and runaway horses), or otherwise acts instinctively to save another (*Brandon v. Osborne, Garrett & Co.*, [1924] 1 K.B. 548; 36 Digest 119, 793; wife trying to save husband from broken glass). Note that in this section acts done to protect property as well as persons are covered. Note also that the emergency need not be actual, only supposed, and that the word "serious" only refers to the estimation by the insured person of the damage to property, not to what it was in fact. "Seriously", applied to injured or imperilled persons, was much criticised in Committee, on the ground that an insured person might not rescue someone whom he did not consider to be seriously injured or imperilled without losing the protection of the section. The section was accordingly amended on the Report Stage.

(a) **Accident.**—See notes (e) and (g) to section 1, *ante*, and the cases collected in Willis 8 *et seq.*

(b) **Insured person.**—See note (b) to section 7, *ante*.

(c) **In or about any premises at which he is for the time being employed for the purposes of his employer's trade or business.**—The words "on, in or about premises" appear in a different context in section 6 (4) of the Workmen's Compensation Act, 1925; Willis 211; but the decisions collected in Willis, at p. 218 *et seq.*, are relevant as to their meaning in the present section. "About" premises apparently means "in close or physical proximity to" "the premises", a question of



fact in each case. "Any premises" will include any premises normally occupied by the employer, such as his mine, factory, yard or office, will include any "premises" temporarily used by him for the purposes of a particular job, e.g., a contractor's hut on a building site, and premises occupied or used by other persons not the employer, but where the insured person happens to be working in the course of his employment, though in such cases he would probably be covered by the general provisions of section 7, *ante*, and would not need to invoke this section. See General note to this section, *supra*. The words "at which he is for the time being employed" were substituted on the Report Stage for "used", to cover cases of men employed on premises not "used" for the purposes of their employer's trade or business, e.g. builders' employees working on a house belonging to a customer of the builders.

"For the purposes of his employer's trade or business". See note (d) to section 8, *ante*, and section 88 (6), *post*. As to "employer", see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*.

(d) **Shall be deemed to.**—See note (s) to section 7, *ante*.

(e) **Arise out of and in the course of his employment.**—See note (g) to section 1, *ante*.

(f) **While he is taking steps.**—Note that the section does not say "while and because". There is a presumption similar to that in section 7 (4), *ante*.

(g) **Actual or supposed emergency.**—The supposition is that of the "rescuer" as at Common Law. See General note, *supra*. If the insured person in fact supposed that there was an emergency, it does not seem to matter whether there were reasonable grounds for the supposition. An honest belief is enough.

(h) **To rescue, succour or protect.**—The word "succour" was added on the Report Stage, to cover cases where an insured person is bringing help to an injured person, though he may not be actually "rescuing" or "protecting" him. For example, a man might go to give a restorative or morphia to another man trapped under debris and himself be injured by a further fall. This would be a case of "succour".

(i) **Are or are thought to be or possibly to be, injured or imperilled.**—"Thought to be" must mean thought by the "rescuer" to be. The word "seriously" was deleted on the Report Stage after criticisms in Committee of the unfairness of such a limitation. The persons injured or imperilled need not be servants of the employer.

(k) **Serious damage to property.**—"Property" means tangible property. The limitation to property, "persons" having been deleted on the Report Stage, is consequent on the deletion of "serious" earlier in the section, relating to persons. Only in the case of property does the damage have to be serious, presumably in the reasonable estimation of the rescuer, to entitle him to benefit.

### *Injury benefit and disablement benefit*

**11. Injury benefit.**—(1) An insured person (a) shall be entitled to injury benefit (b) in respect of any day (c) on which, as the result of the relevant injury (d), he is incapable of work (e) during the injury benefit period (f):

Provided that, subject to the provisions of this Act, an insured person shall not be entitled to injury benefit in respect of the first three such days, unless as the result of the relevant injury he is incapable of work during the said period on not less than twelve days (g).

(2) In determining whether the insured person is incapable of work on the day of the accident, any part of that day before the happening of the accident shall be disregarded.

(3) Injury benefit shall be an allowance (h) payable at the weekly rate of forty-five shillings (i), and the amount payable for any day of incapacity shall be one-sixth of the weekly rate:

Provided that, for any period during which the beneficiary (k) is under the age of eighteen (l) and not for the time being entitled under the following provisions of this Part of this Act (m) to an increase of benefit in respect of a child (n) or adult dependant (o), the said weekly rate shall be as follows, that is to say:—

(a) for a period during which he is between the ages of seventeen and eighteen, thirty-three shillings and ninepence (p); and

(b) for a period during which he is under the age of seventeen, twenty-two shillings and sixpence (q).

(4) For the purposes of this Act, the expression "the injury benefit period" means in relation to any accident, the period of one hundred and



fifty-six days (Sundays being disregarded) beginning with the day of the accident (*r*):

Provided that, if on any of the said days the insured person is not incapable of work as the result of the relevant injury, he may elect (*s*) to treat the injury benefit period as having come to an end, subject to and in accordance with the following provisions, that is to say:—

- (a) he shall be deemed to have so elected if, but only if, on any such day on which he is not incapable as aforesaid, he makes a claim (*t*) for disablement benefit in respect of the accident;
- (b) if after making such a claim he withdraws it (*u*) before it is finally determined (*v*), he shall be deemed also to have withdrawn his election;
- (c) where by making a claim as aforesaid he elects to treat the injury benefit period as having come to an end, it shall be deemed to have come to an end with the last day thereof before the making of the claim on which he was incapable of work as aforesaid or with the third day thereof, whichever is the later (*w*).

#### NOTES

**General effect of section.**—This section gives the right to the first of the three kinds of benefit specified in section 7, *ante*, namely "injury benefit", which is payable during the "injury benefit period" of 156 week days from the accident if the insured person is incapable of work. Subsection 1 originally contained the following proviso:

Provided that an insured person shall not be entitled to injury benefit in respect of the first three such days unless the incapacity continues throughout the period of twenty-four days (Sundays being disregarded) beginning with the day on which he is first incapable of work as the result of the relevant injury.

The three-day waiting period is a legacy from the Workmen's Compensation Act, 1925, section 1 (1) (a), Willis 6, and section 9 (1) (a), Willis 260, with the difference, embodied in the Bill of 1945 but not in the White Paper of September, 1944 (Cmd. 6551), that the three days began with the day on which the insured person was first incapable of work, i.e. the day of the accident was counted as the first waiting day. There are waiting periods in other Insurance Acts. For example, section 32 (1) (a) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1086; imposed a period of three days; sections 23 and 35 (1) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 515, 520; imposed a period of two days in six. But the reason of the inclusion of the period in the present Act was stated several times on behalf of the Government to be purely administrative, inasmuch as the number of accidents requiring absence from work for only one or two days is very large indeed, with consequent increase in administrative cost if claims are to be accepted and dealt with in respect of such accidents.

This explanation was not, however, acceptable to the Standing Committee, which insisted on the amendment omitting the proviso.

On the Report Stage the existing proviso was introduced. It is a compromise and makes two important modifications of the original proviso. The period of 12 days is substituted for 24, and the 12 days need not be consecutive, so long as they are within the injury benefit period of 156 week days. The additional cost is estimated to be £300,000 per annum, but the section is now brought into line with the similar provision in National Insurance Act, 1946, section 11 (1).

Note that injury benefit payable under this section is always at the 45s. weekly rate (or three-quarter or half-rate for young persons) irrespective of percentages and dependent only on the claimant being incapable of work on the day for which he claims benefit. Disablement pension under section 12, *post*, on the other hand is payable weekly at a rate depending upon the percentage of the assessment of disablement, with a maximum rate of 45s. for 100 per cent. disablement (with three-quarter or half-rate for young persons).

By section 28, *post*, every assignment of or charge on benefit, and every agreement to assign or charge benefit, is void. Benefit does not pass to a trustee in bankruptcy (*ibid.*).

(a) **Insured person.**—See note (b) to section 7, *ante*.

(b) **Injury benefit.**—See subsection (3). "Benefit" means, unless the context otherwise requires, benefit under this Act (section 88 (1), *post*).

(c) **Day.**—"Day" means a period of twenty-four hours from midnight to midnight or such other period of twenty-four hours as the Minister may prescribe (section 88 (1), *post*). "Prescribe" means, unless the context otherwise requires, prescribe by regulations (*ibid.*).

(d) **As the result of the relevant injury.**—This is a medical question, to be determined by a medical board or medical appeal tribunal under section 36 (1), *post*. For



decisions on the similar words "where death results from the injury" in section 8 (1) of the Workmen's Compensation Act, 1925, see Willis 237-246, 273-274. The two phrases are similar enough in wording and context to justify reference to these decisions on the meaning of "result".

"Relevant injury" means, in relation to any benefit, the injury in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(e) **Incapable of work.**—These are the same words as those used in the National Insurance Act, 1946, and are defined in section 78 (1) as "incapable of work by reason of some specific disease or bodily or mental disablement or deemed, in accordance with regulations, to be so incapable". They were also used in the proviso to section 24 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1083; and are not to be taken too literally. They cover temporary illness. They must also, in this section, as in section 3 (2), *ante*, be read with reference to the work which the insured person normally does under his contract of service. In section 12, *post*, they may perhaps bear the wider meaning—incapable of any work. The distinction between total and partial incapacity made by section 9 of the Workmen's Compensation Act, 1925; Willis 260; does not apply here, and the decisions thereon; Willis 264; are irrelevant. The phrase "incapable of work" also appeared in section 32 (1), of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1086; and in section 22 (3) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 515. Compare the phrase "incapable of self-support", used in section 35 (5), *post*. Under section 13, *post*, a person may be treated as incapable of work for the purposes of unemployment supplement if he is unlikely to earn more than £52 in a year by reason of his loss of faculty.

As to "accident", see notes to section 1, *ante*, and Willis 8 *et seq*.

(f) **Injury benefit period.**—See subsection (4).

(g) **Three day waiting period.**—See General note, *supra*. "Subject to the provisions of this Act" presumably refers partly to subsection (4). The twelve days need not be consecutive, so long as they are within the "said period", that is the "injury benefit period". See note (r), *infra*. Cf. the proviso to section 11 (2) of the National Insurance Act, 1946.

(h) **Allowance.**—This word is deliberately chosen, denoting here, as in other sections, a payment of a temporary or additional nature as distinct from a permanent pension, granted if there is permanent disability, though both payments are as of right and in no sense *ex gratia*, a meaning which the word "allowance" often bears. Therefore the decisions on the word "allowance" in section 9 (1), proviso (b) of the Workmen's Compensation Act, 1925; Willis 260, 290 *et seq*.; do not help in interpreting the word as used here. The Beveridge Report (Cmd. 6404) (paragraph 320) defines "allowance", as used in the Report, as a weekly payment in respect of a dependant. Cf. the National Insurance Act, 1946, *passim*.

(i) **The weekly rate of forty-five shillings.**—The rate was originally fixed at 35s. a week for the first 13 weeks and 40s. thereafter, continuing during incapacity unless replaced by a pension (see the White Paper, Part II, dated September, 1944 (Cmd. 6551)). In the Bill as presented to Parliament the rate was raised to 40s. a week, replaceable by a pension after 26 weeks of incapacity. On the Second Reading of the Bill in October, 1945, the Minister announced the decision to raise the rate to 45s. (see the Explanatory Memorandum to the original Bill, dated June, 1945 (Cmd. 6651)). This is, of course, the basic rate, in addition to which there are the other benefits given by the Act. The necessary amendment was therefore made in Committee.

(k) **Beneficiary.**—This means, in relation to any benefit, the person entitled to that benefit (section 88 (1), *post*). The word is used throughout the Act in distinction from "claimant", which means a person claiming benefit (*ibid.*).

(l) **Under the age of eighteen.**—A person shall be deemed to be under any age mentioned if he has not attained that age. See section 88 (5) (a), *post*. A person shall be deemed, according to the law both in England and Scotland, not to have attained the age of eighteen years until the commencement of the eighteenth anniversary of the day of his birth. See section 88 (5) (c), *post*. See *ibid.*, for the effect of age on contributions. As to the ascertainment or proof of age for the purposes of this Act, see section 63, *post*.

(m) **Following provisions.**—See sections 19-24, inclusive, *post*.

(n) **Child.**—See note (c) to section 17, *post*.

(o) **Adult dependant.**—See section 18, *post*.

(p) **Thirty-three shillings and ninepence.**—When the Bill was drafted this rate was 20s., half the full rate of 40s. With the increase of the full rate to 45s. the rate under this proviso was raised to 22s. 6d. by amendment in Committee, to make it still half the full rate. The Minister, however, indicated in Committee that he was satisfied that there would be hardship in the seventeen-eighteen year old age group if the rate remained at 22s. 6d., for many boys and girls of that age were earning adult wages. He therefore proposed to create a special age group, with benefits provided at three-quarters of the adult rate, a figure in this case of 33s. 9d. This has been done by this paragraph,



leaving the rate of 22s. 6d., for those under seventeen, in sub-paragraph (b). As to the ascertainment and proof of age, see note (l), *supra*.

(q) **Twenty-two shillings and sixpence.**—This was the rate originally prescribed for all insured persons under eighteen. It has now been increased for those between seventeen and eighteen. See note (p), *supra*.

(r) **Injury benefit period.**—This is the period of 26 weeks from the date of the accident, during which the insured person gets injury benefit and at the end of which he gets a pension if there is still disability. There was a phrase "benefit year" in section 32 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 519; but its meaning and context are so different as to be no help in construing this phrase, which is very clearly defined in the subsection. That phrase is also used in the National Insurance Act, 1946, see section 78 (1).

(s) **Election.**—Election is normally a question of fact in each case, e.g. under section 29 of the Workmen's Compensation Act, 1925; Willis 527; and section 2 of the Law Reform (Contributory Negligence) Act, 1945; 32 Statutes Supp. 63; but the wording of (a) of the proviso in the present subsection makes it clear that the election is only to be deemed to be made by making a claim for disablement benefit before the end of the injury benefit period. Therefore the cases decided under the Workmen's Compensation Act are of no assistance. As to the meaning of "deemed to", see note (s) to section 7, *ante*.

(t) **Makes a claim.**—This will be in the manner to be prescribed by regulations to be made under section 25, *post*. See also section 88 (1), *post*, by which a claim in this context includes an application under section 49, *post*, for a declaration that an accident was or was not an industrial accident, and also an application for the review of an award or decision (sections 37, 40 and 50, *post*).

(u) **Withdraws it.**—This will presumably also be in the manner to be prescribed by regulations under section 25, *post*.

(v) **Finally determined.**—As to the determination of claims, see Part III of the Act, *post*.

(w) **Or with the third day thereof, whichever is the later.**—Although the 3 day waiting period in respect of injury benefit at the beginning of the period was removed from section 11 by amendment in Committee, later to be restored in a modified form, the 3 day period in the proviso has been retained throughout. Disablement benefit cannot begin until after 3 days, however soon the insured person elects to bring the injury benefit period to an end by claiming disablement benefit. If he does not claim until after 3 days, then the period ends with the claim.

**12. Disablement benefit.**—(1) Subject to the provisions of this section, an insured person (a) shall be entitled to disablement benefit (b) if, as the result of the relevant injury (c)—

(a) at the end of the injury benefit period (d) he is suffering from loss of physical or mental faculty (e) which either—

(i) is likely to be permanent (f); or

(ii) is substantial, that is to say, is such that the extent of the resulting disablement assessed in accordance with the following provisions of this section amounts to not less than twenty per cent. (g); or

(b) at some time after the end of the injury benefit period, he becomes subject to a loss of physical or mental faculty which is substantial and likely to be permanent:

Provided that for the purposes of this section there shall be deemed not to be any loss of faculty at any time when the extent of the resulting disablement would be assessed in accordance with the following provisions of this section as not amounting to one per cent. (h).

(2) For the purposes of this section, the extent of disablement shall be assessed, by reference to the disabilities incurred by the claimant as a result of the relevant loss of faculty (i), in accordance with the following general principles (k):—

(a) save as hereafter provided in this subsection, the disabilities to be taken into account shall be all disabilities (whether or not involving loss of earning power or additional expense) to which the claimant may be expected, having regard to his physical and mental condition at the date of the assessment, to be subject during the period taken into account by the assessment as com-



pared with a person of the same age and sex whose physical and mental condition is normal ;

- (b) any such disability shall be treated as having been incurred as a result of the relevant loss of faculty except that, subject to the provisions of any regulations made under the next following subsection, it shall not be so treated in so far as the claimant (*l*) either—

(i) would in any case have been subject thereto as the result of a congenital defect or of an injury or disease (*m*), received or contracted before the relevant accident (*n*) ; or

(ii) would not have been subject thereto but for some injury or disease received or contracted after, and not directly attributable to (*o*), that accident ;

- (c) the assessment shall be made without reference to the particular circumstances of the claimant other than age, sex, and physical and mental condition ;

- (d) the disabilities resulting from such loss of faculty as may be prescribed (*p*) shall be taken as amounting to one hundred per cent. disablement and other disabilities shall be assessed accordingly (*q*).

(3) Provision may be made by regulations for further defining the principles on which the extent of disablement is to be assessed and such regulations may in particular direct that a prescribed loss of faculty shall be treated as resulting in a prescribed degree of disablement ; and, in connection with any such direction, nothing in paragraph (c) of the last foregoing subsection shall be taken to prevent the making of different provision, in the case of loss of faculty in or affecting hand or arm, for right handed and for left handed persons (*r*).

(4) The period to be taken into account by an assessment of the extent of a claimant's disablement shall be the period (beginning not earlier than the end of the injury benefit period (*s*), and limited by reference either to the claimant's life or to a definite date) during which the claimant has suffered and may be expected to continue to suffer from the relevant loss of faculty :

Provided that, if on any assessment the condition of the claimant is not such, having regard to the possibility of changes therein (whether predictable or not), as to allow of a final assessment being made up to the end of the said period,—

- (a) a provisional assessment shall be made, taking into account such shorter period only as seems reasonable having regard to his condition and the possibility aforesaid ; and
- (b) on the next assessment the period to be taken into account shall begin with the end of the period taken into account by the provisional assessment (*t*).

(5) An assessment shall state the degree of disablement in the form of a percentage and shall also specify the period taken into account thereby and, where that is limited by reference to a definite date, whether the assessment is provisional or final :

Provided that—

- (a) the said percentage and period shall not be specified more particularly than is necessary for the purpose of determining in accordance with this section the claimant's rights as to disablement benefit ; and
- (b) a percentage between twenty and one hundred which is not a multiple of ten shall be treated—

(i) if it is a multiple of five, as being the next higher percentage which is a multiple of ten ;



(ii) if it is not a multiple of five, as being the nearest percentage which is a multiple of ten (*u*).

(6) Where the extent of the disablement is assessed for the period taken into account as amounting to less than twenty per cent., disablement benefit shall be an industrial disablement gratuity (in this Act referred to as a "disablement gratuity")—

- (a) of an amount fixed, in accordance with the length of the said period and the degree of disablement, by a prescribed scale, but not in any case exceeding one hundred and fifty pounds; and
- (b) payable, if and in such cases as regulations so provide, by instalments (*v*).

The scale prescribed for the purposes of this subsection shall be the same for all persons, except that a lower amount may be fixed thereby for cases where at the beginning of the period taken into account by the assessment the beneficiary is under the age of eighteen, and may be made to depend on the date on which he will attain that age; but the said lower amount shall not in any case be less than one-half the amount to which the beneficiary would be entitled if at the beginning of the said period he were over that age, nor, in a case where the beneficiary was at the beginning of the said period over the age of seventeen, less than three-quarters of the last mentioned amount (*w*).

(7) Where the extent of the disablement is assessed for the period taken into account as amounting to twenty per cent. or more, disablement benefit shall be an industrial disablement pension (in this Act referred to as a "disablement pension") for that period payable, for the several degrees of disablement set out in the first column of the Third Schedule to this Act, at the respective rates set out in the second column of that Schedule (*x*):

Provided that—

- (a) where that period is limited by reference to a definite date, the pension shall cease on the death of the beneficiary before that date (*y*); and
- (b) for any part of that period during which the beneficiary is under the age of eighteen (*z*) and not for the time being entitled under the following provisions of this Act to an increase of the pension in respect of a child (*aa*) or adult dependant (*bb*), the rate for any degree of disablement shall be as follows, that is to say:—
  - (i) for a part of the said period during which he is between the ages of seventeen and eighteen, three-quarters of the rate set out as aforesaid; and
  - (ii) for a part of the said period during which he is under the age of seventeen, one half of the rate set out as aforesaid (*cc*).

#### NOTES

**General effect of section.**—This is the section which gives the right to disablement benefit, that is the benefit given for loss of faculty continuing after the end of the injury benefit period (as to which, see section 11, *ante*) or supervening thereafter, provided that the loss of faculty is likely to be permanent or is substantial. The extent of disablement is to be assessed in accordance with certain defined general principles, which have nothing to do with loss of earning power but are based on a percentage scale similar to that of the Royal Warrant concerning pensions for members of His Majesty's forces (Cmd. 6799). The assessment may be provisional or final, and for life or for a stated period. Disablement benefit under this section is of one of two kinds, either (a) a disablement gratuity not exceeding £150 where the disablement is less than 20 per cent., or (b) a disablement pension for life or a fixed period, at a basic weekly rate not exceeding 45s. for adults, three-quarter rate for persons between 17 and 18 years old, and half rate for persons under 17 years old.

The Schedule of Assessments of specified injuries which will be drawn up under this section will be similar to that used by the Ministry of Pensions. It will then be submitted in the form of draft regulations made under subsection (3). These will be submitted to the Industrial Injuries Advisory Council, which is to be set up under



section 61, *post*, for their comment and proposals as to modification before being laid before Parliament, where they will lie on the table of the House of Commons for 40 days. The Minister of National Insurance and the Minister of Pensions agreed to set up an Inter-Departmental Committee, including doctors with experience in administering war pensions under the Royal Warrant, doctors with experience in the industrial field, and laymen with experience in both fields, to examine the existing Schedule of Assessments and report on it to the two Ministers, particularly as to its applicability to the field of industrial injuries. This was made clear by the Minister of National Insurance on the Second Reading (414 H. of C. Official Report 277) and later in Committee. The two Ministers in April, 1946, appointed this Committee, under the chairmanship of H.H. Judge Hancock, to examine the assessment of disablement with a view to adopting a schedule applicable both to war pensions cases and to cases covered by the Act. The Committee Joint Secretary's address is the Ministry of National Insurance, 6, Carlton House Terrace, London, S.W.1.

The sum payable as a disablement gratuity under subsection (6) was provided in relation to the basic rate of pension of 40s. and was £100. When the basic rate was raised to 45s., the gratuity was raised to £150.

"Disablement" is not defined in this Act except that it clearly means "loss of faculty". "Disablement" is defined in the Royal Warrant (Cmd. 6799) as meaning physical or mental injury or damage, or loss of physical or mental capacity. In the Disabled Persons (Employment) Act, 1944, section 1; 37 Halsbury's Statutes 348; the expression "disablement" is given a rather wider meaning, having regard to the purpose of the Act, and decisions on its meaning would not be applicable here.

By section 28, *post*, every assignment of or charge on benefit, and every agreement to assign or charge benefit, is void. Benefit does not pass to a trustee in bankruptcy (*ibid.*).

(a) **Insured person.**—See note (b) to section 7, *ante*.

(b) **Disablement benefit.**—See subsections 6 and 7, and notes thereto.

(c) **As the result of the relevant injury.**—This is a medical question, to be determined by a medical board or medical appeal tribunal under section 36 (1), *post*. For decisions on the similar words "where death results from the injury" in section 8 (1) of the Workmen's Compensation Act, 1925, see Willis, 237-246, 273-274. The two phrases are similar enough in wording and context to justify reference to these decisions on the meaning of "result".

"Relevant injury" means, in relation to any benefit, the injury in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(d) **Injury benefit period.**—See section 11, *ante*.

(e) **Is suffering from loss of physical and mental faculty.**—This is also a medical question, to be determined by a medical board or medical appeal tribunal under section 36 (1), *post*. There is no statutory definition of the word "faculty". It is defined in the Shorter Oxford Dictionary, 2nd Ed., 1936, as "(i) The power of doing anything. An ability or aptitude, whether natural or acquired, for any special kind of action; formerly also, ability in general. Occasionally limited to a natural aptitude. (ii) A physical capacity or function. (iii) One of the powers of the mind: e.g. the will, the reason, memory, etc.". It is intended that disablement as assessed under the Act shall be irrespective of earnings or notional earnings and shall be in proportion to the insured person's loss of health, strength and power to enjoy life. See the speech of the Minister on the Second Reading of the Bill (414 H. of C. Official Report 277). Loss of faculty also includes disfigurement. See section 7 (2), *ante*, and note (p) thereto.

(f) **Permanent.**—This is also a medical question, to be determined under section 36 (1), *post*. The word "permanent" appears in relation to incapacity in section 13 of the Workmen's Compensation Act, 1925; Willis 406. It was pointed out in *Calico Printers' Association v. Higham*, [1912] 1 K.B. 93; 5 B.W.C.C. 97; 34 Digest 462, 3781; that it was the stability of the man's condition which had to be considered under that section, and not the permanence of the physical injury. But as the section was concerned with redeeming payments by a lump sum where the payment was likely to remain at the same rate during the rest of the man's life, decisions on it ought not to be applied too closely to the present section.

(g) **Substantial disablement.**—The percentage method is used in the Royal Warrant (Cmd. 6799) (see note (u), *infra*). The Schedule of Assessment for this Act will be made under subsection (3). "Disablement" in the Act clearly means "loss of faculty". See subsections (2) and (3). The First Schedule of the Royal Warrant contains no assessment less than 20 per cent. As to disablement less than 20 per cent., see subsection (6).

(h) **Minor disablement.**—The minimum disablement of 1 per cent. for which benefit is to be paid is fixed so as to exclude pensions for minor, though permanent, disability, though it must be remembered that injury benefit will be paid in respect of the injury in such cases under section 11, *ante*, until the injury benefit period is ended. This emphasises the distinction between the injury and the disablement which it causes.



(i) **Relevant loss of faculty.**—This expression is defined by section 88 (1), *post*, as meaning the loss of faculty resulting from the relevant injury. As to "relevant injury", see *ibid*.

(k) **General principles of assessment.**—It will be observed that these are expressly divorced from loss of earning power, or additional expense, in very similar language to that of paragraph 9 of the Royal Warrant (Cmd. 6799). The disability is to be treated as having been incurred as a result of the relevant loss of faculty unless due to congenital disease or an accident or disease unconnected with the accident. In other words, the burden of proof is not put upon the insured person to prove the connection. Cf. Section 7 (4), *ante*, where the burden of proof that the accident arose out of the employment is similarly lifted from the insured person. The word "treated" is presumably used here instead of "deemed" because the question is really medical rather than legal. See, as to the meaning of "deemed", which is used in this way to the proviso to subsection (1), note (s) to section 7, *ante*.

(l) **Claimant.**—This is defined by section 88 (1), *post*, and here means a person claiming benefit, including an applicant for a declaration that an accident was or was not an industrial accident (see section 49, *post*). It also applies to a person interested in a review (sections 37, 40 and 50, *post*).

(m) **Disease.**—The word as used here is not, of course, confined to the industrial diseases prescribed under section 55, *post*.

(n) **Relevant accident.**—This is defined by section 88 (1), *post*, as meaning, in relation to any benefit, the accident in respect of which that benefit is claimed or payable.

(o) **Attributable to.**—This phrase is used in proviso (b) to section 1 (1) of the Workmen's Compensation Act, 1925; Willis, 6; in connection with "serious and wilful misconduct". But the context is so different, being there a matter of law and not medicine, that the decisions on the phrase cited in Willis, at p. 156, do not apply here.

(p) **Prescribed.**—This means prescribed by regulations. See section 88 (1), *post*. These regulations will be made under subsection (3), *q.v.*, and General note, *supra*.

(q) **One hundred per cent. disablement.**—This follows the principle of the Royal Warrant (Cmd. 6799), in the First Schedule of which the injuries assessed at 100 per cent., are set out. They are, broadly, loss of both legs or one leg and the other foot, loss of sight, loss of a hand and a foot, loss of both hands or arms, the loss of the thumb and four fingers of a hand counting as the loss of a hand, very severe facial disfigurement, and absolute deafness. In that Schedule lesser injuries are assessed at lower percentages. The same principle will no doubt be followed in the Schedule to be drawn up under subsection (3). One hundred per cent. disablement does not therefore indicate a complete cripple. Many 100 per cent. war pensioners are capable of substantial earnings.

(r) **Regulations assessing extent of disablement.**—Subsection (3) follows the principle of the Royal Warrant (Cmd. 6799) and makes the same proviso for the case of left-handed persons. As to the procedure which will be followed in making regulations under this subsection, see General note to this section, *supra*. "Regulations" means regulations made by the Minister under this Act (see section 88 (1), *post*), that is, under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(s) **Final assessment of period of disablement.**—The date on which this period is to begin will be fixed by the medical board or medical appeal tribunal assessment under section 36 (1), *post*. As to the "injury benefit period", see section 11, *ante*. This is the final assessment which is to be made when, presumably, the claimant's degree of disablement has become stabilised and can be assessed at a certain percentage. The assessment may always be reviewed under section 40, *post*.

(t) **Provisional assessment of period of disablement.**—This is to be made by the medical board or medical appeal tribunal under section 36 (1), *post*, when a final assessment is not yet possible. The date on which the period is to begin will also have to be fixed. There is provision for making further provisional assessments at the expiration of the period fixed by the first one. This can continue until a final assessment is possible, and even this can be reviewed under section 40, *post*.

(u) **Percentage assessment of disablement.**—This method is used in the Royal Warrant (Cmd. 6799) and a Schedule of Assessments of specified injuries is to be drawn up under subsection (3). See General note and notes (k), (q) and (r), *supra*. The First Schedule to the Royal Warrant gives a number of percentage assessments of specified injuries. The assessment will be made under section 36 (1), *post*, following the Schedule of Assessments where the injury is one specified therein.

The assessment may be for the claimant's life (see subsection (4)). As to final and provisional assessments, see notes (s) and (t), *supra*, to subsection (4).



The proviso was amended on the Report Stage and divided up, the original proviso as to particularly becoming paragraph (a) and a new paragraph (b) being added, the effect of which is that if, for example, the percentage assessment is 35 per cent., it shall be treated as 40 per cent. for the purpose of calculating the rate of benefit under the Third Schedule, *post*, while if it is, for example, 53 per cent., it shall be treated as 50 per cent. This amendment is the result of criticism in Committee of the hardship caused by an assessment of, say, 59 per cent. Under the Bill as it then stood it would have been treated as 50 per cent. and benefit paid at the rate appropriate to 50 per cent. and not 60 per cent. The provision as to particularity means that the medical board or medical appeal tribunal shall only fix the period and percentage with sufficient particularity to enable the claimant to know under which provisions of the Act he will come; for example, where an assessment is in the region of 20 per cent. a greater degree of particularity will be required, for the purpose of applying subsection (6), than where the assessment is in the region of 30 per cent., which is not an important dividing line. There is always the power of review given by section 40, *post*.

(v) **Disablement gratuity.**—This is awarded where the disablement is less than 20 per cent. It is the only lump sum payment provided for in the Act except for the sum, also called a "gratuity", payable to a widow on remarriage under section 19 (2) (b), *post*, to a parent under section 22 (4), *post*, and to a relative under section 23 (3), *post*. It is completely different from the lump sums payable under the Workmen's Compensation Act, 1925, in case of death (section 8; Willis 237) or on the registration of an agreement for the payment of a lump sum (sections 22–25; Willis 501–505). The limit of 20 per cent. has been considerably criticised as being too high, but it is and has been for 25 years the limit fixed by the Royal Warrant (Cmd. 6799). There is always the power of review under sections 37, 40 and 50, *post*, in the event of aggravation of the injury, for there is nothing in the Act to suggest that a gratuity is a final "paying off" of an injured man, debarring him from raising any further question. The reverse is clearly intended.

The gratuity was originally fixed at £100 on the basis of a pension rate of 40s. When the rate was raised to 45s. it was decided to raise the gratuity to £150.

Pneumoconiosis is not to be assessed in the category of disablements under 20 per cent. This was made clear by the Minister in Committee. As to pneumoconiosis, see section 57, *post*.

The "prescribed scale" means prescribed by regulations (section 88 (1), *post*). Regulations have not been made at the time of going to press.

(w) **Three-quarter and half-rate gratuity for young persons.**—This provision corresponds with the provision for three-quarter and half-rate injury benefit contained in section 11 (3), *ante*, and the provision for three-quarter and half-rate pension contained in subsection (7). The scale to be prescribed by regulations will provide for cases of injury to young persons under 17, with not less than half-rate gratuity (it may be more) until attaining that age, not less than three-quarter rate gratuity between 17 and 18, and full-rate gratuity thereafter. As to the ascertainment and proof of age, see section 63, *post*. A person shall be deemed to be under any age mentioned if he has not attained that age. A person shall be deemed to be between any two ages if he has attained the first-mentioned age and has not attained the second-mentioned age. A person shall be deemed, according to the law both in England and Scotland, not to have attained the age of eighteen years until the commencement of the eighteenth anniversary of the day of his birth (section 88 (5), *post*). As to the effect of age on contributions, see *ibid*.

"Beneficiary", in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*).

(x) **Disablement pension.**—This pension is the core round which the whole Act has grown. It is based on disablement, quite apart from incapacity to earn or actual earnings, and is payable, once fixed, regardless of what a person may earn, though the assessment of disablement may be reviewed under sections 37, 40 and 50, *post*. The idea of a flat rate pension was introduced into workmen's compensation during the late war by the Workmen's Compensation (Supplementary Allowances) Act, 1940; Willis 748; which provided for allowances at fixed rates to an injured workman, in addition to his weekly payments, in respect of himself and his children. These allowances were increased by the Workmen's Compensation (Temporary Increases) Act, 1943; Willis 760; which also gave an allowance in respect of a wife. The word "pension" is deliberately chosen to indicate the character and permanence of the payment, which is not granted until the claimant's disablement can be assessed with the probability that it will not change either for better or worse. The word also brings this payment into the general pensions scheme of the Government contained in this and other Acts or Bills, though of course it is not an *ex gratia* pension.

The Beveridge Report (Cmd. 6404) (paragraph 320) defines "pension" as a weekly payment presuming permanent or prolonged loss of earning power through age, industrial accident or industrial disease.

The pension is only payable in cases where a disablement gratuity is not payable, i.e., cases assessed at 20 per cent. or more disablement.

For the Third Schedule, see *post*. The rates in this Schedule were originally drawn up on a basic weekly rate of 40s. for 100 per cent. disablement. With the raising of



the basic rate to 45s. the rates for lesser percentages have also been raised. Note that injury benefit payable under section 11, *ante*, is always at the 45s. weekly rate (or three-quarter or half-rate for young persons), irrespective of percentages and dependent only on the claimant being incapable of work on the day for which he claims benefit.

By section 28, *post*, every assignment of or charge on benefit, and every agreement to assign or charge benefit, is void. Benefit does not pass to a trustee in bankruptcy (*ibid.*).

The raising of the rate of pension to 45s. has necessitated an additional weekly contribution of 1d. per insured person, payable by him. See the Second Schedule, Part I, *post*.

(y) **Death ending pension.**—When a beneficiary dies, death benefit becomes payable to various persons. See sections 19–24, *post*. The only rights of his personal representatives would be to benefit due but unpaid at the date of his death.

(z) **Under the age of eighteen.**—As to the ascertainment and proof of age, see section 63, *post*. As to attaining an age, see section 88 (5), *post*, and note (w), *supra*.

(aa) **Increase of the pension in respect of a child.**—As to this, see section 17, *post*, where the definition of "child" is fully considered in note (c).

(bb) **Increase of the pension in respect of an adult dependant.**—As to this, see section 18, *post*.

(cc) **Three-quarter and half-rate pension for young persons.**—This provision corresponds with the provision for three-quarter and half-rate injury benefit contained in section 11 (3), *ante*, and for three-quarter and half-rate disablement gratuity contained in subsection (6), *supra*. Upon reaching the age of eighteen, the beneficiary is entitled to a pension at the full rate.

**13. Increase of disablement pension on account of unemployability.**—(1) The weekly rate of a disablement pension (a) shall be increased by twenty shillings (b), if, as the result of the relevant loss of faculty (c), the beneficiary is incapable of work and likely to remain permanently so incapable (d):

Provided that, for any period during which the beneficiary is under the age of eighteen and not for the time being entitled under the following provisions of this Act to an increase of the pension in respect of a child (e) or adult dependant (f), the increase under this section shall be as follows, that is to say:—

(a) for a period during which he is between the ages of seventeen and eighteen, fifteen shillings; and

(b) for a period during which he is under the age of seventeen, ten shillings (g).

(2) For the purposes of this section, a person may be treated as being incapable of work and likely to remain permanently incapable of work, notwithstanding that the loss of faculty is not such as to prevent him being capable of work, if it is likely to prevent his earnings exceeding fifty-two pounds in a year (h).

(3) An increase of pension under this section (in this Act referred to as an "unemployability supplement") shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time (i).

#### NOTES

**General effect of section.**—Under this section a person entitled to a disablement pension is entitled to an unemployability supplement of 20s. a week in addition to that pension (or 10s. for a young person) if as a result of the loss of faculty he is, and is likely permanently to be, incapable of work. He may be so treated if he is not likely to earn more than £52 a year. The supplement is payable notwithstanding the fact that the assessment of disablement is less than 100 per cent.

Subsection (3) will cover, amongst other things, the case of a man retiring from the field of employment and drawing a retirement pension under the National Insurance Act, 1946. He will no longer need, nor reasonably be entitled to, an unemployability supplement. See also section 30, *post*, relating to overlapping benefits.

Section 82, *post*, provides that regulations may be made for conferring the right to the supplement on persons who are or have been on or after the "appointed day" (as to which, see section 7 (1), *ante*, and section 88 (1), *post*), entitled in respect of any injury or disease to weekly payments under the Workmen's Compensation Acts or under any certified contracting-out scheme, and are or could be treated as incapable of work under this Act. This provides for some of the hard cases under the Workmen's Compensation Acts, including what are known as the "pre-1924 cases", for it includes



every accident that has come under the Acts since 1897, so long as the injured person is still drawing a weekly compensation benefit. Those who commute their weekly Workmen's Compensation payment for a lump sum after the "appointed day" will still be entitled to unemployability supplement, but those who have commuted before that day are not at present eligible for the supplement, though if the employers' organisations of this country submit a scheme for redeeming this liability, which was theirs under the Workmen's Compensation Acts, the Minister has promised to consider it sympathetically (414 H. of C. Official Report 274). As to commuting, see sections 13 and 24 of the 1925 Act; Willis 406, 501.

The idea of an unemployability supplement was taken from war pensions practice (see Royal Warrant (Cmd. 6799), Article 15, where the word "unemployable" is used but is not defined). The rate was fixed by the White Paper on Social Insurance, Part II (Cmd. 6551), paragraph 39, at 10s. for persons there described as "virtually unemployable". The rate was doubled in the Bill as presented to Parliament.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy (section 28, *post*).

(a) **Disablement pension.**—See, as to this, section 12 (7), *ante*.

(b) **Twenty shillings.**—This increase is automatic upon proof that the beneficiary is incapable of work. For the history of this rate, see General note, *supra*.

(c) **As the result of the relevant loss of faculty.**—See note (d) to section 11, *ante*, for comment on the words "as the result of". "The relevant loss of faculty" means the loss of faculty resulting from the "relevant injury", as to both which phrases see section 88 (1), *post*. "Loss of faculty" is discussed in note (e) to section 12, *ante*. Its assessment is a medical matter under section 36 (1) (c), *post*.

(d) **Incapable of work and likely permanently to remain so incapable.**—In so far as it depends on medical considerations, this will be a matter for medical assessment under section 36 (1) (c), *post*. In so far as it depends upon working conditions or types of work available for injured people, it was originally to be a matter for assessment by the Minister under section 36, *post*, but it was thought better to make it a matter for the insurance officer under section 45, *post*, and the necessary amendment was made in Committee. The permanence of the incapacity depends on similar considerations: cf. section 12 (1) (a) (i), *ante*.

The phrase "incapable of work" would appear to require a wider interpretation in this section than in sections 3 (2) and 11 (1), *ante*. In those sections it seems to be used in connection with the work which the insured person is doing at the time, for the sections relate to payment of contributions and to injury benefit respectively and the sections refer in items to the week or day in or on which the person is incapable of work. In this section the phrase is clearly used in relation to a person's general capacity for work for the rest of his life, without reference to the particular work he was doing before the accident. Therefore the use of the phrase in the Acts mentioned in the notes to sections 3 (2) and 11 (1) is of little help in interpreting it as used here. The phrase used in the Royal Warrant (Cmd. 6799), Art. 15, is "unemployable". The idea of the supplement derives from the Royal Warrant. The phrase "incapable of self-support" is used both in the Royal Warrant, Art. 1 (7), and in section 35 (4), *post*, but bears a quite different meaning. Cf. the expression "totally and permanently incapacitated for work", used in section 57 (2), *post*.

Decisions on the general meaning of "incapacity for work" in section 9 of the Workmen's Compensation Act, 1925; Willis 260, 264; should be read with caution, for it is there pointed out that "incapacity for work" is not the same as "incapacity to work", the latter phrase probably having more nearly the same meaning as "incapable of work" than the former. For the purposes of subsection (2) the factors which had to be taken into account under section 9 of the 1925 Act, namely a man's chances in the labour market, would seem to be more relevant than for the purposes of subsection (1). See *Allen v. Tinsley Park Collieries, Ltd.* (1944), 37 B.W.C.C. 28, per Lord GREENE, M.R., at p. 31.

(e) **Child.**—See section 17, *post*, where the meaning of the word is fully considered in note (c). A person shall be deemed to be under any age mentioned if he has not attained that age. A person shall be deemed to be between any two ages if he has attained the first-mentioned age and has not attained the second-mentioned age. A person shall be deemed, according to the law both in England and Scotland, not to have attained the age of eighteen years until the commencement of the eighteenth anniversary of the day of his birth (section 88 (5), *post*). As to the effect of age on contributions, see *ibid*.

(f) **Adult dependant.**—See section 18, *post*.

(g) **Three-quarter and half-rate supplement.**—These reduced supplements correspond with the three-quarter and half-rate injury benefit payable to persons under 18 by section 11, *ante*, and the three-quarter and half-rate disablement gratuity and pension payable under section 12, *ante*. See also note (e), *supra*.

(h) **Earnings not exceeding £52 in a year.**—Once the loss of faculty has been assessed as a medical matter under section 36 (1) (c), *post*, the probability of the earnings being limited to £52 in a year (20s. a week) is a matter for determination by the insurance



officer under section 45, *post*. Once the earnings are down to 20s. or less, the supplement is given so as to ensure to the beneficiary an income of 20s. as well as his disablement pension. It must be remembered that most disabled persons, even those assessed at 100 per cent., are capable of earning. There is no three-quarter or half-rate of probable earnings in the case of young people. A person under 18 who is not likely to earn more than £52 in a year is in the same position as an adult.

(i) **Grant and renewal of unemployability supplement.**—This will be done by the insurance officer under section 45, *post*. This was originally one of the "special questions", which insurance officers are required by section 48, *post*, to refer, but the provision of section 36 (1), *post*, which included it among the "special questions" was deleted in Committee. The power to fix a period for the payment of the supplement enables cases of provisional assessment to be dealt with (see section 12 (4), *ante*), where there is still a possibility of change in the beneficiary's condition. It also enables provision to be made for the case of a man who will later retire from the field of employment and be eligible for retirement pension under the National Insurance Act, 1946, sections 20 and 21.

Sections 14 (4) and 15 (3), *post*, are in similar terms.

#### 14. Increase of disablement pension in cases of special hardship.

—(1) The weekly rate of a disablement pension (*a*) shall, subject to the following provisions of this section, be increased by eleven shillings and threepence (*b*), if as the result of the relevant loss of faculty (*c*) the beneficiary (*d*)—

- (a) is incapable and likely to remain permanently incapable of following his regular occupation (*e*); and
- (b) is incapable of following employment of an equivalent standard which is suitable in his case (*f*).

(2) In the foregoing subsection—

- (a) the reference to a person's regular occupation shall be taken as not including any subsidiary occupation of his (*g*);
- (b) the reference to employment of an equivalent standard shall be taken as not including employment other than insurable employment (*h*);

and in assessing the standard of remuneration in any employment, including a person's regular occupation, regard shall be had to his reasonable prospects of advancement (*i*).

(3) A beneficiary shall not be entitled to an increase of pension under this section for any period for which he is entitled to an unemployability supplement (*k*); and the weekly rate of a disablement pension, apart from any increase in respect of the need for constant attendance (*l*) or in respect of a child (*m*) or adult dependant (*n*), shall not by virtue of this section be increased above forty-five shillings (*o*).

(4) Subject to the last foregoing subsection, an increase of pension under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time (*p*).

(5) Regulations (*q*) may make as respects a disablement gratuity (*r*) provision corresponding to that made by this section as respects a disablement pension, and may include provision for payment of a pension in lieu of the gratuity.

#### NOTES

**General effect of section.**—This section provides for an increase of disablement pension in certain cases of special hardship. The Workmen's Compensation Scheme provided for what was known as the "odd lot". This expression was introduced by Fletcher Moulton, L.J., in *Cardiff Corporation v. Hall*, [1911] 1 K.B., at p. 1020; 4 B.W.C.C., at p. 171; 34 Digest 402, 3284; when dealing with the question whether partial incapacity could be treated as total in such cases unless the employer could show that suitable employment was available. Section 9 (4) of the Workmen's Compensation Act, 1925; Willis 261, 321; dealt with the treatment of partial incapacity as total, but did not prevent the workman from alleging that he was an "odd lot" (*Crossley v. Brunyee* (1925), 18 B.W.C.C. 320; 34 Digest 402, 3286). Examples of an "odd lot" are the coal hewer who loses four fingers of his right hand, the train driver who loses an eye, or the compositor who loses an index finger.

This Act, when presented as a Bill to Parliament, would only justify a low or moderate percentage assessment of disablement in respect of such injuries, though their



effect might be to prevent the insured person ever returning to his pre-accident occupation. As a result of representations, the Minister announced on the Second Reading of the Bill that an insured person should have the right to claim an additional 25 per cent. to his medical board assessment, provided that it was not thereby raised above the 100 per cent. rate, if he could show to the satisfaction of a local appeal tribunal that by reason of his injury he was no longer able to follow his previous occupation, and could not be so retrained as to enable him to follow an occupation of an equivalent standard (414 H. of C. Official Report 276). This section was, as a result, introduced in Committee as a Ministerial New Clause. The original proposal was to add 25 per cent. to the assessment of disablement translated into benefit, so that a person entitled to a 50 per cent. assessment would only get 22s. 6d., plus 25 per cent. of 22s. 6d., which is 5s. 7½d. Now, every person, adult or juvenile, who comes under this section will be entitled to an increase in his disablement pension of 11s. 3d., whatever his percentage assessment, if he is, in effect, an "odd lot", unable any longer to follow his regular occupation or an equivalent and suitable occupation, his regular occupation not including any subsidiary occupation, and a suitable occupation not including any which is not an insurable employment. Regard is also to be had to his reasonable prospects of advancement, this provision referring particularly to cases where a young person has had an accident towards the end of his apprenticeship which precludes him from going on to finish it. The total weekly disablement pension, however, is not to be increased beyond 45s., by reason of this addition, except where an increase is payable in respect of the need for constant attendance or in respect of a child or adult dependant. Nor is a beneficiary to be entitled to an increase under this section for any period for which he is entitled to an unemployability supplement. Provision is also made for adapting this section to cases where a disablement gratuity is payable.

As was pointed out in Committee, this section goes more nearly than any other in the Act back to the Workmen's Compensation principle of the difference between pre-accident and post-accident earnings, a principle which the Act is designed to abandon. There seems, however, to be no other way of dealing fairly with these special cases except by supplementary schemes applicable to particular industries, as to which, see section 83, *post*, a section added to the Bill on the Report Stage.

The total cost of this increase together with the increase of disablement pension to 45s. is expected to amount to 1d. per week per insured person.

(a) **Weekly rate of disablement pension.**—As to this, see section 12 (7), *ante*, and the Third Schedule, *post*.

(b) **Eleven shillings and threepence.**—This sum is 25 per cent. of 45s. As to the reason for expressing the increase in this way, see General note, *supra*.

(c) **Relevant loss of faculty.**—This, by section 88 (1), *post*, means the loss of faculty (see sections 7 and 12 (1), (2), and (3), *ante*), resulting from the relevant injury, which means (section 88 (1), *post*), in relation to any benefit, the injury in respect of which that benefit is claimed or payable.

(d) **Beneficiary.**—This, in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*).

(e) **Incapable and likely to remain permanently incapable of following his regular occupation.**—As to the words "incapable and likely to remain permanently incapable", see section 35 (4), *post*, where very similar words are considered in relation to self-support. "Regular occupation" is used instead of "pre-accident occupation" which might be interpreted as meaning the work a person happened to be doing on the day before the accident. This might be something quite different from his usual work. The expression is intended to mean the occupation which was normally followed and the word "occupation" is used, instead of "employment". A man may have an occupation through he is at the time unemployed. A seasonal worker may "follow" an occupation in a particular district though he could not be said to be "normally employed" there for the purposes of the Unemployment Insurance (Anomalies) (Seasonal Workers) Order, 1935, r. 2 (S.R. & O. 1935 No. 804). Cf. "regular wage-earning employment", used in section 38 (2) (b) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 523; and interpreted in Umpire's Decisions 1272/1928 and 5766/1930, where it was held to be generally assumed that four weeks might elapse before an employment could be regarded as "regular", unless by the terms or nature of the employment it was regular and not casual. See, generally, 34 Halsbury's Laws (2nd Edn.) 546, 554. Some such rough rule will probably be followed under this Act, though the intention is to leave each case to be decided on its own facts. The length of time a person has been following the occupation is irrelevant if it is his regular occupation in the sense that it is what he intends to do. Even a dock labourer whose employment was until recently "casual", in the way he was engaged, is a dock labourer by regular occupation, knows the "tricks of the trade", and probably does no other work on days when his labour is not wanted in the docks. Cf. "gainfully occupied" in section 1 of the National Insurance Act, 1946. Note that the conditions in paragraphs (a) and (b) both have to be fulfilled. No subsidiary occupation is to be taken as included (subsection (2) (a)).

The question of incapacity will be decided by the insurance officer in the first instance. If he disallows the claim it will go to the local appeal tribunal, who will



decide, as a question of fact, what the insured person's regular occupation was and then, having regard to the medical assessment of disablement (see section 36 (1) (c), *post*), will decide whether to allow the increase under this section. Their decision will be subject to appeal to the Commissioner. See sections 45, 46 and 47, *post*. See also subsection (4) of this section.

(f) **Incapable of following employment of an equivalent standard which is suitable in his case.**—Note that this paragraph deals with "employment" as distinct from "occupation" in paragraph (a). See note (e), *supra*. Note also that the requirements of both paragraph (a) and (b) have to be fulfilled. The insured person has to be incapable of following his regular occupation and also incapable of doing a suitable job of equivalent standard, though the incapacity does not have to be permanent or likely to be permanent.

In the Workmen's Compensation Act, 1925, section 9 (3) (i); Willis 261, the words "earning or able to earn in some suitable employment or business after the accident" are used. "Able to earn" was put in in case the workman was not earning as much as he could. For the cases decided on these words, see Willis 306-316. These include the "odd lot" cases. In section 9 (4) (i); Willis 261; the words "able to obtain work in the same grade in the same class of employment as before the accident" are used. For the decided cases, see Willis 326-328. In assessing the standard and suitability of any employment which a beneficiary's injuries will allow him to follow, these decided cases may be of considerable help, especially those on suitability (Willis 308) and on the grade and class of employment (Willis 328). "Employment of an equivalent standard" inevitably involves a comparison of past and pre-accident earnings as well as of working conditions. It does not include employment other than insurable employment (subsection (2) (b)). It does, however, include employment for which a person may be suited after training under section 74, *post*, or after provision of artificial limbs, etc. under section 75, *post*. It also requires regard to be had to reasonable prospects of advancement (see note (i), *infra*). It would appear that if a person to whom this section applies temporarily earns higher wages after the accident than before it, he will not lose his 11s. 3d. increase altogether but will be entitled to it in any week when it is decided that the only employment he is capable of following because of his disablement is one not of "equivalent standard".

(g) **Regular employment not to include subsidiary occupation.**—Cf. the First Schedule, Part II (8), and the Second Schedule, Part II (2) (a), *post*, where the expression "subsidiary employment" is used. It was also used in the First Schedule, Part II (11) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 571; and various subsidiary employments have been specified by regulation or order. See 34 Halsbury's Laws (2nd Edn.) 488. It is also used in section 1 (3) (b) (i) of the National Insurance Act, 1946. In the present paragraph the expression would include an occupation which the insured person followed before the accident, but which was not his principal or regular occupation. For example, a railway signalman may have done jobbing gardening for remuneration during his off-duty hours, a clerk may have given conjuring entertainments in the evenings after office hours or have taught shorthand or book-keeping at an evening institute. In each case it is a question of fact. As to the distinction between occupation and employment, see note (e), *supra*. For Umpire's decisions under the Unemployment Insurance Acts on occupations which could ordinarily have been followed in addition to the usual occupation, see 34 Halsbury's Laws (2nd Edn.) 508-510.

(h) **Employment of equivalent standard not to include employment other than insurable employment.**—As to insurable employment, see section 1, *ante*, and the First Schedule, *post*. A person coming within this section is not to be compelled to take employment outside the scope of the Act.

(i) **In assessing standard of remuneration, regard to be had to reasonable prospects of advancement.**—When assessing whether employment is of "an equivalent standard" (subsection (1) (b)) the main consideration will be the rate of remuneration. The question has to be asked—does the disablement prevent the beneficiary from doing what he was doing before and also does it prevent him from becoming what he would or might have become had he continued in his regular occupation? It is particularly relevant in the case of young apprentices who are disabled. Such a person may even, in the present condition of wages, be earning more after the accident than he was before it, but the tribunal must also consider whether his prospects in his new job are reasonably equal to what they were in the old one.

(k) **Unemployability supplement.**—As to this, see section 13, *ante*.

(l) **Increase for constant attendance.**—As to this, see section 15, *post*.

(m) **Increase in respect of child.**—As to this, see section 17, *post*.

(n) **Increase in respect of adult dependant.**—As to this, see section 18, *post*.

(o) **Forty-five shillings.**—This is the maximum rate of disablement pension fixed by section 12 (7), *ante*, and the Third Schedule, *post*.

(p) **Period for which increase payable.**—This subsection is similar to sections 13 (3), *ante*, and 15 (3), *post*. The question will be first considered by the insurance officer



and, if he does not admit the claim, on reference or appeal, by the local appeal tribunal or Commissioner. See sections 36 (2), 45, 46 and 47, *post*.

(q) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament, they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(r) **Disablement gratuity.**—As to this, see 12 (6), *ante*.

**15. Increase of disablement pension where constant attendance needed.**—(1) The weekly rate of a disablement pension (a) payable in respect of an assessment of one hundred per cent. (b) shall be increased by such amount as is hereinafter mentioned, if as the result of the relevant loss of faculty (c) the beneficiary (d) requires constant attendance (e).

(2) The amount by which a pension is to be increased under this section shall be determined in accordance with regulations (f) by reference to the extent and nature of the attendance required by the beneficiary, but shall not exceed twenty shillings, except in cases of exceptionally severe disablement, or forty shillings in any case (g).

(3) An increase of pension under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time (h):

Provided that no such increase shall be payable in respect of a period for which the beneficiary is receiving free of charge medical treatment as an in-patient in a hospital or similar institution (i).

#### NOTES

**General effect of section.**—This section gives a beneficiary a 20s. weekly increase in his pension where he requires constant attendance, which clearly means constant attendance in his own home or possibly as a hospital out-patient as distinct from hospital attendance as an in-patient, see the proviso to subsection (3) and section 16, *post*. See also section 32, *post*, relating to prisons, etc. The Minister may increase the amount up to 40s. in cases of exceptionally severe disablement. The payment is a weekly increase of pension and therefore does not become payable until a disablement pension is awarded under section 12 (7), *ante*. There is no provision for a payment for constant attendance during the injury benefit period (see as to this period, section 11, *ante*), but in a case where a claimant was so badly disabled as to be in need of constant attendance he would probably elect to treat the injury benefit period as having come to an end under the proviso to section 11 (4), *ante*.

The provision for persons requiring constant attendance appears in the Royal Warrant, Article 14 (Cmd. 6799).

The increase of benefit given by this section is in addition to those given by sections 17 and 18, *post*.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy (section 28, *post*).

(a) **Disablement pension.**—See section 12 (7), *ante*.

(b) **Assessment of one hundred per cent.**—See section 12 (5), *ante*.

(c) **As the result of the relevant loss of faculty.**—See note (d) to section 11, *ante*, for comment on the words "as the result of". "The relevant loss of faculty" means the loss of faculty resulting from the "relevant injury", as to both of which phrases, see section 88 (1), *post*. "Loss of faculty" is discussed in note (e) to section 12, *ante*. Its assessment is a medical matter under section 36 (1) (c), *post*.

(d) **Beneficiary.**—This means in relation to any benefit, the person entitled to that benefit (section 88 (1), *post*).

(e) **Requires constant attendance.**—This means attendance at the beneficiary's home or possibly as a hospital out-patient. Attendance or nursing given to an in-patient in a hospital is covered by section 16, *post*. The attendance may be given by anybody, including the beneficiary's wife. There is no qualification of the phrase in the section, and the Minister made it clear in his speech on the Second Reading of the Bill that it will not be necessary to prove that somebody from outside is coming in. The wife herself can get the 20s. per week (414 H. of C. Official Report 278). Strictly it would not be necessary to prove that constant attendance was actually given, for the words are "requires constant attendance", not "is receiving constant attendance", though for practical purposes the two phrases are the same. In section 36 (1) (a) (v), *post*, the phrase "need of constant attendance" is used.



The provision is one which appears in Article 14 of the Royal Warrant (Cmd. 6799) in the form "constant attendance on the member is necessary on account of the disablement".

"Constant" will presumably be construed reasonably and not confined to persons who are completely bedridden or incapable of doing anything for themselves.

(f) **Regulations as to determination of amount of increase.**—The question whether the increase of disablement pension in respect of the need of constant attendance is to be granted or renewed, and, if so, for what period and of what amount, is to be determined by the Minister (see section 36 (1) (a) (iv), *post*), presumably on general principles to be laid down in regulations, which by section 88 (1), *post*, means regulations made by the Minister under this Act, that is under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(g) **Amount of increase.**—Like the 20s. unemployability supplement payable under section 13, *ante*, this increase of pension is designed to ensure a beneficiary at least 20s. a week in addition to his basic disablement pension. See notes to section 12, *ante*. The further increase, up to a total of 40s., payable in cases of exceptionally severe disablement was added to the section on the Report Stage, in order to bring it into line with the proposed increase in the similar allowance payable under the Royal Warrant, Article 14, it having been found that in cases of this kind an increase of 20s. is no longer enough. The increase is given at the discretion of the Minister, who decides the amount. "Exceptionally severe disablement" is a question of fact in each case and no doubt the words, which are strong, will be strictly construed by the Minister so as only to include very bad cases, requiring a very great deal of attendance and nursing. The Minister will presumably be guided by the findings of the medical board or medical appeal tribunal on this point under section 39, *post*.

(h) **Grant and renewal of increase.**—See section 36 (1) (a) (v), *post*, and note (f), *supra*. Sections 13 (3) and 14 (4), *ante*, are in similar terms.

(i) **Medical treatment free of charge.**—This proviso shows clearly that the section only deals with attendance at home or possibly as an out-patient at a hospital. As to "free of charge", regulations may be made under section 34 (3) (a), *post*, for determining in what cases and for what periods a person receiving medical treatment as an in-patient is or is not to be treated for the purposes of this Act as receiving it free of charge. "Medical treatment" means medical, surgical or rehabilitative treatment (including any course of diet or other regimen) (section 34 (1), *post*). "Hospital or similar institution" includes a workhouse (section 88 (1), *post*). Regulations have not been made at the time of going to press. They will presumably cover the very numerous cases where a person, though treated free, is so treated as a result of his contributions to a voluntary scheme, and also those cases where a patient, on discharge from a hospital, makes a voluntary contribution to its funds, which is not a "charge" in the ordinary sense of the word. Regulations under section 34 (3) (b), *post*, may provide that where a person receives medical treatment as an in-patient for two or more distinct periods separated by an interval or intervals of less than a specified duration, he shall be treated for the purposes of this Act as receiving it continuously from the beginning of the first period until the end of the last. Regulations have not been made under that section at the time of going to press.

**16. Increase of disablement pension during approved hospital treatment.**—Where a beneficiary (a) entitled to a disablement pension (b) enters any hospital or similar institution (c) for the purpose of receiving approved hospital treatment (d), then if the degree of disablement in respect of which the pension is payable was assessed at less than one hundred per cent. (e), it shall be treated for the period for which he receives such treatment (f) as if it had been assessed at one hundred per cent.

#### NOTES

**General effect of section.**—This section provides for payment of disablement pension at the full 100 per cent. rate during hospital treatment. The section as originally drafted contained a further provision that if the treatment was "free of charge" (as to which see note (i) to section 15, *ante*, and section 34, *post*) the pension should be reduced again by 10s. This provision was opposed in Committee and removed by amendment.

(a) **Beneficiary.**—This means, in relation to any benefit, the person entitled to that benefit (section 88 (1), *post*).

(b) **Disablement pension.**—See section 12 (7), *ante*.

(c) **Hospital or similar institution.**—This includes a workhouse (section 88 (1), *post*).

(d) **Approved hospital treatment.**—This is to be construed, in relation to any benefit received by the beneficiary, as referring to his receiving, as an in-patient in a hospital or similar institution, with the approval of the Minister medical treatment for



the relevant injury or loss of faculty (section 34 (2), *post*). As to "relevant injury" and "loss of faculty", see section 88 (1), *post*. "Relevant injury" means, in relation to any benefit, the injury in respect of which that benefit is claimed or payable, and "relevant loss of faculty" means the loss of faculty resulting from the relevant injury. As to loss of faculty, see sections 7 and 12, *ante*.

(e) **Assessment of less than 100 per cent. disablement.**—As to the assessment of disablement, see section 12, *ante*, especially subsection (5).

(f) **Period of hospital treatment.**—As to the determination of this period, see section 34 (3), *post*, and the regulations to be made thereunder. See also note (i) to section 15, *ante*.

**17. Increase of injury benefit and disablement pension in respect of children.**—(1) For any period during which—

- (a) a beneficiary (a) entitled to injury benefit (b) has a family which includes a child or children (c); or
- (b) a beneficiary entitled to a disablement pension (d) has such a family and is either entitled to an unemployability supplement (e) or receiving approved hospital treatment (f);

the weekly rate of the injury benefit or disablement pension shall be increased by seven shillings and sixpence in respect of that child or the elder or eldest of those children (g).

(2) Where the beneficiary is a man, a child of the family of any woman for the time being residing with him (h) shall be treated for the purposes of this section as a child of his family if the child either—

- (a) is an illegitimate son or daughter of theirs; or
- (b) was born not less than six months before the date of the relevant accident (i) and wholly or mainly maintained by the beneficiary throughout the six months ending with that date (k).

**NOTES**

**General effect of section.**—This section gives to a beneficiary entitled to injury benefit or who is unemployable or receiving approved hospital treatment an increase of injury benefit and disablement pension in respect of the beneficiary's first child and, in certain circumstances, of a man's illegitimate child or the child, maintained by him, of a woman living with him.

The other children will be covered by the Family Allowances Act, 1945 (32 Statutes Supp. 75).

The benefit is also in addition to those given by sections 15, *ante*, and 18, *post*, and is intended, as is the intention of section 18, to be given to the beneficiary for the period when he is unfit for work or cannot get work (Cmd. 6651, paragraphs 5 and 6). This benefit is not payable at the same time as the increase of 7s. 6d. per week in respect of the first child payable under section 23 of the National Insurance Act, 1946; though 2s. 6d. of such benefit will come out of the Industrial Injuries Fund. Nor is it payable when the beneficiary is earning (see Explanatory Memorandum to the Bill, June, 1945 (Cmd. 6651)). See also, as to overlapping benefits, section 30, *post*.

As to who were "dependants" under Workmen's Compensation and what children were included, see section 4 of the 1925 Act; Willis 186. See also the definition of "child" in and for the purposes of section 1 of the Workmen's Compensation (Supplementary Allowances) Act, 1940; Willis 750; 6 Statutes Supp. 118. Adopted children were included by the Adoption of Children (Workmen's Compensation) Act, 1934; Willis 196.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy. In calculating means for the purposes of section 5 of the Debtors' Act, 1869; 1 Halsbury's Statutes 575; where a committal order is contemplated, no account is to be taken of any increase of injury benefit or disablement benefit under this section. See section 28 (2), *post*.

(a) **Beneficiary.**—This, in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*).

(b) **Injury benefit.**—See as to this section 11, *ante*.

(c) **Has a family which includes a child or children.**—By section 88 (2) (c), *post*, a person shall be deemed to have a family which includes a child or children if that person (not being a child) and a child or children (with or without a wife or husband of that person) would be treated for the purposes of the Family Allowances Act, 1945; 32 Statutes Supp. 75; as constituting a family. Section 3 of that Act; 32 Statutes Supp. 76; makes elaborate provisions as to the persons who are to be treated as constituting a family. Broadly they are a man and his wife and the children of them or of either of them, a man with no wife or separated from his wife and his children or



children maintained by him, and a woman with no husband or separated from her husband and her children or children maintained by her. It is provided by section 3 (2) and (3) and the Schedule to that Act; *ibid.*; that for the purpose of being treated as issue of a man or woman the child must live with him or her and be maintained to the extent of 5s. per week.

"Child" means a person who would be treated as a child for the purposes of the Family Allowances Act, 1945 (section 88 (2) (a), *post*). For the Family Allowances Act, see 32 Statutes Supp. 75, and especially section 2 of that Act, *ibid.*, where the persons to be so treated are defined as being persons (a) who are under the upper limit of the compulsory school age and (b) who are undergoing full-time instruction in a school or are apprentices during the period between attaining the age of sixteen years and August 1st next following. The upper limit of the compulsory school age is defined for the purposes of the section by subsection (2) thereof as meaning the age that is for the time being that limit by virtue of section 35 of the Education Act, 1944; 37 Halsbury's Statutes 165; together with any Order in Council made under that section or under section 108 (3) of the Act; *ibid.* 214. It is further provided that a person who at any time attains the upper limit of the compulsory school age shall not be treated as being under that limit at any time thereafter, notwithstanding any subsequent change in that limit, and that a person who becomes an apprentice after an interval of not more than one month from attaining the upper limit of the compulsory school age, or from ceasing to undergo full-time instruction in a school, shall be treated as having been an apprentice throughout the interval; 32 Statutes Supp. 75. By section 35 of the Education Act, 1944; 37 Halsbury's Statutes 165; the compulsory school age means any age between five and fifteen years, with power in the Minister of Education to raise the upper limit to sixteen years by Order in Council. At the time of going to press the age has not been so raised. Furthermore it has been retained at fourteen years by the Compulsory School Age (Postponement) Order, 1944, S.R. & O. 1944 No. 979, in force until April 1st, 1947, unless its previous expiry is directed by a further Order. This Order was made under section 108 (3) of the Education Act, 1944; 37 Halsbury's Statutes 214; and section 35; *ibid.* 165; is subject to that Order, so that the age is still fourteen years and section 35 must be read as if "fourteen" were substituted for "fifteen". As to "attaining" an age, see section 21 (8) of the Family Allowances Act, 1945; 32 Statutes Supp. 87, and section 88 (5), *post*. It is intended to raise the school leaving age to fifteen years in April, 1947.

Adopted children are also included in the term "child" as used in this Act, for by section 21 (4) of the Family Allowances Act, 1945; 32 Statutes Supp. 86; an adopted child within the meaning of the Adoption of Children Act, 1926; 9 Halsbury's Statutes 827; or the Adoption of Children (Scotland) Act, 1930, shall be treated as if the child were legitimate issue of the adopter, or, if the child was adopted by two spouses jointly, or by one of two spouses after their marriage, as if the child were legitimate issue of their marriage, and shall not be treated as being issue of any other person.

Children who are legitimate issue of a deceased spouse of any person by an earlier marriage of the deceased spouse to another are to be treated as issue of that person unless the earlier marriage was terminated other than by the deceased spouse's death, e.g. by a decree of dissolution.

Illegitimate children are included to the extent provided by subsection (3), and, of course, apart from subsection (3), if they are legitimated by the subsequent marriage of their parents. See the Legitimacy Act, 1926; 2 Halsbury's Statutes 25; and the Family Allowances Act, 1945, section 21 (3); 32 Statutes Supp. 86. By section 21 it is also provided that an illegitimate child is not to be treated for the purposes of the Act as being issue of its father, and that a child being illegitimate issue of a deceased spouse of any person shall be treated as issue of that person so far as regards any period during which the child is living with that person. See also section 23 of the National Insurance Act, 1946.

Provisions for the inclusion of legitimated and adopted children also appeared in section 42 (3) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1232.

Any question whether any person is or was a child or is or was under the upper limit of the compulsory school age or has or had a family including a child or children or is or was a child of some other person's family (but not whether any person is to be treated for the purposes of the present Act as having a family or as being a child of some other person's family) is to be determined in like manner, subject to any prescribed modifications and adaptations, as a corresponding question arising in respect of an allowance under the Family Allowances Act, 1945 (section 36 (1) (b), *post*). The appropriate section of the Family Allowances Act, 1945, is section 5; 32 Statutes Supp. 77; which provides that such questions shall be determined by the Minister of National Insurance, with a right of reference to a referee or referees selected from a panel.

It should be remembered that it is dangerous to rely on any other statutory or judicial definition of "child". The word is defined in many different senses in many different Acts, quite apart from its use in wills or deeds, and for the purposes of the particular Act only.

(d) **Disablement pension.**—As to this, see section 12 (7), *ante*.



(e) **Unemployability supplement.**—As to this, see section 13, *ante*.

(f) **Approved hospital treatment.**—By section 34 (2), *post*, this is to be construed, in relation to any benefit payable to a person, as referring to his receiving, as an in-patient in a hospital or similar institution, with the approval of the Minister, medical treatment for the relevant injury or loss of faculty. "Relevant injury" means, in relation to any benefit, the injury in respect of which that benefit is claimed or payable. "Relevant loss of faculty" means the loss of faculty resulting from the relevant injury (section 88 (1), *post*). As to loss of faculty, see sections 7 and 12, *ante*.

(g) **Weekly increase of 7s. 6d.**—In the White Paper on Social Insurance of September, 1944, Part II (Cmd. 6551), the proposed rate was 5s. where the injury allowance was 35s., and 7s. 6d. where the injury allowance was 40s., or where a 100 per cent. disablement pension was awarded, with proportionate rates for lower rates of pension. It was later decided to improve the provision in cases where the beneficiary was for the time being either unfit for work or unable to get it. Accordingly the rate was raised to 7s. 6d. in the Bill as presented to Parliament. See also section 18, *post*.

It was decided in Scotland in relation to section 1 (1) (a) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1200; that the additional allowance for children given by that section (5s. per week for the first and 3s. per week for each other child) is payable only as part of the widow's pension, and that if no such pension is payable, no additional allowance is payable; *Jardine v. Dept. of Health for Scotland*, [1939] S.C. 559.

It is clear that the same principle applies to all additional allowances payable under the present Act.

(h) **Woman for the time being residing with him.**—The expression "residing with" also occurs in section 24, *post*, in relation to a female person having the care of the children. Compare the expression "unmarried dependant living as a wife" used in Article 1 (20) of the Royal Warrant (Cmd. 6799). If any illegitimate child is legitimated by the subsequent marriage of its parents, as to which see Legitimacy Act, 1926; 2 Halsbury's Statutes 25; this section does not apply. As to "residing", see note (e) to section 19, *post*. See also section 88 (4) (b), *post*, as to temporary absence.

(i) **Born not less than 6 months before the date of the relevant accident.**—This only applies if the beneficiary is not the father of the child. As to ascertainment and proof of date of birth, see section 63, *post*. "Months" means calendar months (Interpretation Act, 1889, section 3; 18 Halsbury's Statutes 993). "Relevant accident", in relation to any benefit, means the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(k) **Wholly or mainly maintained.**—Regulations may provide for determining the circumstances in which a person is or is not to be deemed for the purposes of this Act to be wholly or mainly maintaining another person. See section 33 (1), *post*. These regulations have not been made at the time of going to press. The expression "wholly or mainly maintaining" was used in sections 37 and 38 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 522, 523; and was defined in section 39; *ibid.* 524. It was there used in relation to dependent children, wives, husbands, parents or step-parents, and female persons having the care of the dependent children.

It is now used in sections 23 and 24 of the National Insurance Act, 1946; and section 34 of that Act is in similar terms to section 35 (1) of this Act, *post*.

In the Workmen's Compensation Act, 1925, section 4; Willis 186; the phrase used was "wholly or in part dependent upon the earnings of the workman", and in section 4 (2) "partly dependent" was defined as meaning "dependent partially on contributions from [the workman] for the provision of the ordinary necessities of life suitable for persons in his class and position". It is in this sense that the words in the present Act will probably be interpreted, whether the necessities of life are "wholly" or "mainly" provided by the beneficiary. The authorities collected in Willis 197-200 will therefore probably be relevant, save that in the present Act there is no mention of "earnings." A beneficiary may maintain a person out of private means or by his own physical work, e.g., by growing food in his garden, and will be within the section unless the regulations to be made provide otherwise.

Compare the expression "providing for" a child as used in section 21 of the Family Allowances Act, 1945, and defined in section 22; 32 Statutes Supp. 86.

**18. Increase of injury benefit and disablement pension in respect of adult dependants.**—(1) The weekly rate of injury benefit (a) shall be increased by sixteen shillings (b) for any period during which—

- (a) the beneficiary (c) is residing with or is wholly or mainly maintaining his wife (d);
- (b) the beneficiary is wholly or mainly maintaining her husband who is incapable of self-support (e);
- (c) the beneficiary has residing with him and is wholly or mainly maintaining any such other relative as may be prescribed, being



a relative in relation to whom such further conditions as may be prescribed are fulfilled (*f*); or

- (d) some female person (not being a child) has the care of a child or children of the beneficiary's family, or of a child or children treated as such for the purposes of the last foregoing section, being a person in relation to whom such further conditions as may be prescribed are fulfilled (*g*).

(2) The last foregoing subsection shall, for any period for which the beneficiary either is entitled to an unemployability supplement (*h*) or is receiving approved hospital treatment (*i*), apply to a disablement pension (*k*) as it applies to injury benefit.

(3) Regulations (*l*) may provide that a beneficiary shall not be entitled to an increase of benefit under this section in respect of a wife or husband where the earnings of the wife or husband (calculated or estimated in the prescribed manner and on the prescribed basis) exceed the prescribed amount (*m*).

(4) A beneficiary shall not be entitled to an increase of benefit under this section in respect of more than one person for the same period (*n*).

(5) In this section the expression "relative" does not include any person who is a child, but includes a person who is a relative by marriage or adoption and a person who would be a relative if some person born illegitimate had been born legitimate (*o*).

#### NOTES

**General effect of section.**—This section gives a further increase of both injury benefit and, if the beneficiary either is entitled to an unemployability supplement or is receiving approved hospital treatment, disablement pension at the rate of 16s. per week in respect of certain "adult dependants" who are defined. Only one such person can be taken into account at a time and there are exceptions in the case of a wife or husband whose earnings exceed a prescribed amount. The increase of benefit given by the section is in addition to those given by sections 15 and 17, *ante*. The intention of the section is to give this increase during the period when a beneficiary is either unfit for work or unable to get it (Cmd. 6651, paragraphs 5 and 6).

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy. See section 28, *post*.

Cf. section 24 of the National Insurance Act, 1946.

The adult dependants enumerated in this section are persons "wholly or mainly maintained" by the beneficiary. Section 35 (1) and (2), *post*, provides for the making of regulations (not made at the time of going to press) as to the circumstances in which a person is to be deemed to be "wholly or mainly maintaining" another and as to cases where a person is partly maintained by two or more beneficiaries, each qualified for an increase under section 18 and where the contributions of those persons are sufficient to satisfy the requirements of the proposed regulations as to contributions to maintenance.

The section originally contained a provision that regulations might forbid an increase in respect of a wife or husband "permanently or temporarily resident outside Great Britain". But this was deleted by amendment in the House of Lords to bring the section into line with section 24 of the National Insurance Act, 1946. The policy of both Acts is to disqualify a beneficiary or the wife or husband of a beneficiary for benefit while absent from Great Britain. (Section 1 (1) of the National Insurance Act, 1946; and section 7 (3) of this Act, *ante*.) "Residence" involves consideration of a person's intention. Where does he have his settled or usual abode? (*Levene v. Inland Revenue Commissioners*, [1928] A.C. 217, 222; 13 T.C. 487; Digest Supp. See also *Inland Revenue Commissioners v. Lysaght*, [1928] A.C. 234; 13 T.C. 511; Digest Supp.) The intention of these Acts being to disqualify by mere absence, reference to residence has been left out. An amendment to the same effect was made in section 32, *post*.

(a) **Injury benefit.**—See section 11, *ante*.

(b) **Sixteen shillings.**—In the White Paper on Social Insurance, Part II, of September, 1944 (Cmd. 6551) the proposed rate was 8s. 9d. where the beneficiary was receiving injury allowance at the rate of 35s. per week, or 10s. where he had a 100 per cent. pension, with proportionate rates for lower rates of pension. It was later decided to improve this provision in cases where the beneficiary was for the time being either unfit for work or unable to get it. Accordingly, the rate was raised to 16s. in the Bill as presented to Parliament. See also section 17, *ante*.

(c) **Beneficiary.**—In relation to any benefit this means the person entitled to that benefit (section 88 (1), *post*).



(d) **Residing with or wholly or mainly maintaining his wife.**—This covers cases where a man and his wife live together and also where, though separated, the husband maintains the wife either under an agreement, oral or written, or a deed of separation, or under a maintenance order made by a competent court. Note that if residence together is proved it is not also necessary to prove that the husband is maintaining his wife. As to "residing", see note (c) to section 19, *post*. As to "wholly or mainly maintaining", see General note to this section, note (k) to section 17, *ante*, section 35 (1) and (2), *post*, and sections 23, 24 and 34 of the National Insurance Act, 1946.

(e) **Incapable of self-support.**—A person shall be deemed to be incapable of self-support if, but only if, he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for a prolonged period (section 35 (5), *post*). Cf. the wider definition of the same expression given in Art. 1 (7) of the Royal Warrant (Cmd. 6799). Cf. also the expression "permanently incapable of self-support" which is used in sections 19, 20, 22 and 23, *post*, relating to death benefit and is also defined in section 35 (5), *post*, with the substitution of "remainder of his life" for "a prolonged period". Cf. also the expression "requires constant attendance", used in section 15, *ante*. Section 39 (1) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 522; contained the expression "husband who is prevented by physical or mental infirmity from supporting himself" and, in another place "father or step-father who is unable by reason of physical or mental infirmity to support himself". In these expressions the likelihood of prolonged incapability was not mentioned. The expression is used in the National Insurance Act and is defined in section 78 (1), 1946, by reference to this Act.

(f) **Prescribed relatives.**—See subsection (5), *infra*, for the limitations of the word "relatives". "Prescribed" means prescribed by regulations (section 88 (1), *post*). No regulations have been made as to this at the time of going to press.

(g) **Female person having care of children.**—No regulations have been made as to this at the time of going to press. As to children of the beneficiary's family or children treated as such, see note (c) to section 17, *ante*, where this matter is fully dealt with.

(h) **Unemployability supplement.**—See section 13, *ante*.

(i) **Approved hospital treatment.**—See section 34 (2), *post*, and note (d) to section 16, *ante*.

(k) **Disablement pension.**—See section 12 (7), *ante*.

(l) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, that is, under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press. As to "resident", which appeared in this subsection as originally drafted, see note (c) to section 19, *post*.

(m) **Prescribed amount of wife's or husband's earnings.**—This is to be prescribed by regulations (section 88 (1), *post*); regulations have not been made at the time of going to press. In Part I of the White Paper on Social Insurance (Cmd. 6550), the amount of earnings which it was proposed should make sickness and unemployment benefit not payable was 20s. It was stated in the Explanatory Memorandum to the Bill of June, 1945 (Cmd. 6651) that the increase would be subject to this rule. But it was stated for the Government, in Committee, that in making regulations the question of 20s. would be considered in relation to the question of dependency. In addition to fixing the maximum earnings for this purpose the regulations will no doubt deal with the case where earnings occasionally, perhaps only in one week, exceed the prescribed amount.

(n) **No double benefit under this section.**—This does not of course affect the rights to benefit under sections 15 and 17, *ante*, which are in addition to the rights under this section.

(o) **"Relative".**—This subsection does not define the word. It merely mentions certain relatives who are and are not included in it for the purposes of the section. The word is used in a number of other Acts, but in each of them in a limited and different sense, defined in the particular Act. The word in this section, subject to the exception as to children, will therefore bear its natural meaning, that is, one who is connected with another or others by blood or affinity, affinity being relationship by marriage as opposed to consanguinity, which is relationship by blood (Shorter Oxford English Dictionary, 2nd Edn., 1936).

See also note (o) to section 23 (5), *post*.

As to adoption, see the Adoption of Children Act, 1926; 9 Halsbury's Statutes 827. Persons who are "relatives" through illegitimate children are, for example, aunts who are the sisters of the illegitimate child's mother. Note that the subsection refers to a person "born legitimate". It does not apply to persons legitimised by subsequent marriage of their parents under the Legitimacy Act, 1926; 2 Halsbury's Statutes 25.



*Death benefit*

**19. Widows.**—(1) The widow of the deceased (*a*) shall be entitled to death benefit (*b*) if at his death she either was residing with him (*c*) or was receiving or entitled to receive, or would but for the relevant accident have been receiving or entitled to receive, from him periodical payments for her maintenance of not less than the prescribed amount (*d*).

(2) In the case of a widow, death benefit shall be—

- (a) a pension (*e*) commencing from the death of the deceased and payable, at the weekly rate for the time being applicable under the following provisions of this section, for life or until she remarries (*f*); and
- (b) a gratuity (*g*), payable on the termination of the pension in consequence of her remarriage, of an amount equal to fifty-two times the weekly rate of the pension to which she was then entitled.

(3) Subject to the following provisions of this section, the weekly rate of a pension payable under this section shall be thirty shillings (*h*)—

- (a) for any period for which the widow is entitled to an allowance under the following provisions of this Part of this Act in respect of a child of the deceased's family (*i*); or
- (b) where the widow was over the age of fifty at the deceased's death or has attained the age of fifty during a period for which she was entitled to such an allowance (*k*); or
- (c) where the widow at the deceased's death was permanently incapable of self-support (*l*);

and in any other case shall be twenty shillings (*m*):

Provided that, unless the deceased and his widow were residing together at his death, the said weekly rate shall not exceed the aggregate weekly rate of the payments referred to in subsection (1) of this section (*n*).

(4) Regulations may provide that, for any prescribed period ending not later than thirteen weeks after the deceased's death, there shall be substituted for the weekly rate of pension otherwise applicable under the last foregoing subsection such higher rate not exceeding thirty-six shillings as may be prescribed (*o*).

(5) For the purposes of this section—

- (a) references to a widow receiving or being entitled to receive payments from the deceased shall be construed as referring, and as referring only, to her receiving or being entitled to receive whether from him or from another payments provided or procured by the deceased (*p*);
- (b) the expression "entitled" means, in relation to any such payments, entitled under any order of a court, trust or agreement which the widow has taken reasonable steps to enforce (*q*).

**NOTES**

**General effect of section.**—This is the first of several sections giving the right to industrial death benefit, that is, benefit payable if the death of the insured person results from the injury (section 7 (1) (*c*), *ante*).

Under this section the widow of the deceased is entitled to benefit if at his death she was residing with him or dependent on him. The condition that she must have been married to him before the relevant accident unless he was entitled to an unemployment supplement at his death, was removed in Committee by amendment, as leading to hardship. The cost of this amendment was estimated by the Minister at not more than £250,000 a year. The benefit payable is a pension of 30s. per week if there is a child or if the widow is fifty years old or is permanently incapable of self-support at the date of the death, with a maximum rate of 36s. per week for the first 13 weeks after the death. Otherwise the rate is 20s. If the deceased only contributed to his wife's maintenance the widow's rate is proportionately reduced. Benefit under this section is independent of the pension formerly payable to the widows of "insured men" under the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1200; which was a pension payable under a contributory scheme



and is now payable at a higher rate as one of the widows' benefits under sections 17 and 18 of the National Insurance Act, 1946. As to overlapping benefits, see section 30, *post*.

Under the Workmen's Compensation Act, 1925, the dependants entitled to claim compensation under section 8; Willis 237; where death resulted from the injury included the widow (section 4; Willis 186). But the compensation under section 8 was a lump sum not in any case exceeding in the aggregate, having regard to all the dependants, £700. This was increased from £600 by the Workmen's Compensation (Temporary Increases) Act, 1943, section 2 (2); Willis 763. The present section substitutes a pension for a lump sum unless the widow re-marries, in which case a year's pension becomes payable as a gratuity and the pension terminates. The pension, unlike disablement pension, begins from the death.

Benefit under this section cannot be assigned or charged nor does it pass to a trustee in bankruptcy nor is it to be taken into account in assessing a person's means for the purposes of a judgment summons when a committal order under section 5 of the Debtors' Act, 1869; 1 Halsbury's Statutes 575; is contemplated. See section 28, *post*.

Section 40 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1231; provided that in assessing damages in any action under the Fatal Accidents Acts, 1846 to 1908; 12 Halsbury's Statutes 335 *et seq.*; there should not be taken into account any widow's pension, additional allowance or orphan's pension payable under that Act. The present Act contains no similar provision nor does the National Insurance Act. The whole question of alternative remedies is dealt with by the Monckton Committee on Alternative Remedies in their Report (Cmd. 6860). See, as to this, General note to section 7, *ante*.

(a) **The deceased.**—In relation to death benefit this means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*). As to ascertainment and proof of death, see section 63, *post*.

(b) **Death benefit.**—See subsections (2), (3) and (4), and section 7 (1) (c), *ante*. Its full name is "industrial death benefit". The death must have resulted from the injury caused by the accident. See section 7 (1) (c), *ante*.

(c) **Residing with him.**—The word "residing" is used here merely in the sense of living with him. If the wife was living with her husband in the ordinary sense of the word, death benefit is payable without it being necessary to consider any of the questions as to what constitutes residence in the sense "where does a man reside", as to which, see General note to section 18, *ante*. As to temporary absence, see section 88 (4) (b), *post*.

(d) **Receiving periodical payments for her maintenance.**—Note that this is an alternative condition to residence. It was substituted on the Report Stage for "being wholly or mainly maintained by him", as to the meaning of which, see note (k) to section 17, *ante*. This expression was criticised in Committee, where it was said that it might not cover a wife who was separated from her husband at the date of his death. The present words were accordingly substituted to cover such cases. They would appear to achieve this purpose, "entitled" being a word which covers amounts payable under a separation agreement or court order. (See subsection (5).) It is also intended to provide by regulations that the receipt by the wife from the husband of periodical payments above a sum prescribed (section 88 (1), *post*) by those regulations shall be regarded as entitlement, whether or not, presumably, the payments are made under an agreement or order. It is the husband's obligation to maintain his wife, so that she is in one sense "entitled" to some payment in any case, unless she deserts him, for example, or commits adultery, though to bring herself within subsection (5) (b) she must have a court order, trust or agreement in her favour. In such a case the wife would not in any sense be "entitled" unless the regulations provide that in any event receipt of payments shall be regarded as entitlement. The "prescribed amount" will probably be 5s. a week.

The "relevant accident" means, in relation to any benefit, the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(e) **Pension.**—This word is deliberately chosen to indicate the character and permanence of the payment, as in section 12 (7), *ante*, and in distinction from the gratuity payable on termination of the pension on remarriage under subsection 2 (b). As to the rate, see subsections (3) and (4).

(f) **Remarriage of widow.**—This includes cohabitation with a man as his wife (section 88 (3), *post*). It will clearly be easier to ascertain and prove remarriage (see section 63, *post*) than to ascertain and prove exactly when such cohabitation began, for the purposes of this section. Cf. section 17 (2) of the National Insurance Act, 1946; as to the remarriage of a widow eligible for pension under that Act.

(g) **Gratuity.**—This word is used deliberately in contrast with "pension", *supra*. This is the only lump sum payment provided for in the Act, with the exception of the "disablement" gratuity payable under section 12 (6), *ante*, in cases of a disability of less than 20 per cent. and the gratuities payable to parents and relatives under sections 22 (3) and 23 (3), *post*. The amount is in effect one year's pension.

(h) **Weekly rate of pension.**—The rate of 30s. has remained unchanged since



it was proposed in the White Paper on Social Insurance, Part II, in September, 1944 (Cmd. 6551).

(i) **Child of the deceased's family.**—As to this, see section 17, *ante*, where the whole question of who is a "child" and what is a "family" is fully discussed. The "following provisions" referred to are in sections 21 and 24, *post*. Note the use of the word "allowance" in distinction from "pension" and "gratuity". In this Part of the Act it means something additional to the basic pension.

(k) **Age of fifty.**—A person shall be deemed to be over or under any age mentioned if he or she has or has not attained that age. See section 88 (5) (a), *post*. As to ascertainment and proof of age, see section 63, *post*. The allowance referred to is payable under section 21, *post*. The period of entitlement to allowance under that section can begin after the death. As to the effect of age on contributions, see section 88 (5) (d), *post*. This age was proposed in Part II of the White Paper on National Insurance in September, 1944 (Cmd. 6551). The age in the Royal Warrant (Cmd. 6799), paragraph 24 (2), is 40 years for qualifying for the higher rates of pension unless the widow is incapable of self-support or is getting a child allowance or an allowance out of public funds analogous to a pre-natal allowance or where the child dies under 18 or 16, according to the father's rank.

(l) **Permanently incapable of self-support.**—Section 35 (5) (b), *post*, provides that a person shall be deemed to be permanently incapable of self-support if, but only if, he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for the remainder of his life. Cf. the phrase "incapable of self-support" used in section 18 (1) (b), *ante*, which is defined in section 35 (5) (a), *post*, in similar terms save that for "the remainder of his life" is substituted "a prolonged period". In the Royal Warrant, Article 1 (7) (Cmd. 6799), the phrase "incapable of self-support" is given a rather wider definition.

(m) **Twenty shillings.**—This rate has remained unchanged since it was proposed in Part II of the White Paper on Social Insurance (Cmd. 6551) in September, 1944.

(n) **Weekly rate not to exceed rate of payments for widow's maintenance.**—Section 39 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 524; contained a provision relating to the cases when an insured contributor is to be deemed to be wholly or mainly maintaining another person. The present proviso was in similar language but was amended on the Report Stage in consequence of the amendment to subsection (1). See note (d), *supra*. The reference to the aggregate rate of payments is intended to cover cases where there are sums payable from more than one source, for example, under an agreement or a trust and under a court order.

(o) **Regulations as to higher rate for first thirteen weeks.**—The weekly rate of 36s. for these weeks, which is to be the maximum rate prescribed by regulations, has not been changed since it was first provided for in the White Paper on Social Insurance, Part I, of September, 1944 (Cmd. 6551). This temporary higher rate is fixed in conformity with the rate payable under the National Insurance Act, 1946, to a widow for the first thirteen weeks. See the Explanatory Memorandum to the Bill of June, 1945, paragraph 19 (Cmd. 6651). The 36s. rate represents the 20s. minimum rate of benefit increase payable in all cases where the beneficiary is no longer capable of work, as in sections 13 and 15, *ante*, added to the 16s. minimum benefit payable in respect of adult dependants under section 18, *ante*.

"Regulations", by section 88 (1), *post*, means regulations made by the Minister under this Act, that is under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(p) **Entitlement to payments from the deceased.**—This subsection was added on the Report Stage, consequent on the amendments to subsections (1) and (3), and "for the purposes of this section" refers to those subsections. This subsection defines "entitlement". The payments must have actually have been provided by the deceased out of his own resources or procured by him to be paid by another; for example, where the deceased had purchased an annuity payable to his wife by a Society or Assurance Company. "Procured" means "arranged for", in the sense that the deceased must have done what was necessary to ensure that the payments would be made.

(q) **"Entitled".**—Note that this definition is exhaustive, "means" being the word used, not "includes". Whether the steps taken to enforce the order, trust or agreement are reasonable is a question of fact in each case; for example, taking out a summons or getting the help of the court missionary in respect of arrears due under a court order, writing to the husband to urge payment of arrears under an agreement or to the trustees in the case of a trust. Legal proceedings, or even employing a solicitor to threaten them, would probably not be expected of a wife in the case of a trust or agreement unless she was eligible for a Poor Person's certificate and knew of the Poor Persons' procedure. See R.S.C., Order 16, rr. 22-31; Annual Practice, 1945, 287-298.



**20. Widowers.**—(1) The widower of the deceased shall be entitled to death benefit (a) if at her death (b) he—

- (a) was being wholly or mainly maintained by her or would but for the relevant accident have been so maintained (c); and
- (b) was permanently incapable of self-support (d).

(2) In the case of a widower, death benefit shall be a pension commencing from the death of the deceased, and payable, at the weekly rate of thirty shillings, for life (e).

#### NOTES

**General effect of section.**—This section gives the widower of a deceased insured woman the right to death benefit provided that he was, or would have been but for the accident, wholly or mainly maintained by her and also was permanently incapable of self-support. As in section 19, *ante*, the condition as to marriage before the relevant accident was removed in Committee by amendment, as leading to hardship. In the original Bill of June, 1945, it was proposed to limit benefit under this section to widowers of industrial workers. See the Explanatory Memorandum to the Bill (Cmd. 6651), but this limitation was omitted from the Bill as presented in October, 1945.

Benefit under this section is a pension at the weekly rate of 30s., commencing from the death and payable to the widower for life. There will obviously not be a large number of cases under this section, as was indicated by the Minister in Committee when accepting the amendment increasing the rate from 20s. to 30s. Note that there is no requirement of "residing with". The pension, unlike disablement benefit, begins from the death.

A widower was included in the "dependants" set out in section 4 of the Workmen's Compensation Act, 1925; Willis 186.

The section does not apply to a man living with a woman not his wife.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy. See section 28, *post*.

(a) **Death benefit.**—Industrial death benefit is made payable by section 7 (1) (c), *ante*, where death results from the injury caused by the accident, *ibid*.

(b) **Death.**—As to ascertainment and proof of death, see section 63, *post*.

(c) **Wholly or mainly maintained by her.**—As to the meaning of this, see section 17, note (k), and section 18, note (d), *ante*, where the meaning of this expression is fully considered. In distinction from section 17, *ante*, this section only applies to cases where the person maintained is permanently incapable of self-support. See also section 35 (1), *post*, under which regulations are to be made as to the interpretation of this expression. They have not been made at the time of going to press.

The "relevant accident", by section 88 (1), *post*, means, in relation to any benefit, the accident in respect of which that benefit is claimed or payable.

(d) **Permanently incapable of self-support.**—See section 35 (5) (b), *post*, and note (l) to section 19, *ante*. This expression means incapable for life, but without the word "permanently" it means incapable for a prolonged period. The incapacity must have resulted from the "relevant accident" and therefore war wounded men are not within the section. They are covered by the Royal Warrant (Cmd. 6799). Note that this condition is additional to dependence.

(e) **Rate of death benefit.**—Note the use of the word "pension", indicating the character and permanence of the payment, which is expressed to be for life, as distinct from an "allowance" which is additional to a basic pension. There is no proviso for its ceasing on remarriage, because it is only payable to a widower who is permanently incapable of self-support. The rate proposed in the White Paper on Social Insurance, Part II, in September, 1944 (Cmd. 6551) and in the Bill as presented to Parliament was 20s., but the Minister in Committee agreed to an amendment to 30s., in order to make benefit under this section correspond with that payable under section 19 (3), *ante*.

**21. Children of the deceased's family.**—(1) Where at his death (a) the deceased (b) had a family which included a child or children (c), then, for any period during which a person (d) has a family which includes that child or one or more of those children, that person shall be entitled in respect of the child or the elder or eldest of the children to death benefit (e) by way of an allowance at the weekly rate of seven shillings and sixpence (f):

Provided that this subsection shall have effect subject to the provisions of the Fourth Schedule to this Act limiting the benefit payable in respect of any death (g).

(2) Where the deceased was a man,—



- (a) a (legitimate) son or daughter of his, who—  
 (i) at his death was a child of his wife's, but not of his, family; or  
 (ii) is born to him posthumously (*h*); and  
 (b) an illegitimate son or daughter of him and any woman residing with him at his death, being a son or daughter who then was a child of her family and was being, or would but for the relevant accident have been, wholly or mainly maintained by him (*i*);  
 shall be treated for the purposes of this section as having been a child of the deceased's family at his death (*k*).

# NOTES

**General effect of section.**—This section continues, in the form of death benefit, the benefit of 7s. 6d. given by section 17, *ante*, as an increase to injury benefit or disablement in respect of the eldest child. The section sets out those who are to be treated as having been children of the deceased's family at his death. This is one of the sections giving death benefit which is limited by the provisions of the Fourth Schedule, *post*, in cases where two or more persons satisfy the conditions for benefit. As to guardian's allowance for orphans, see section 19 of the National Insurance Act, 1946.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy. See section 28, *post*.

Cf. section 23 of the National Insurance Act, 1946.

(a) **Death.**—As to ascertainment and proof of death, see section 63, *post*.

(b) **The deceased.**—In relation to death benefit this means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*).

(c) **Family which included a child or children.**—See, as to this, section 88 (2), *post*, and note (c) to section 17, *ante*, where the matter is fully discussed.

(d) **A person.**—This includes a widow or widower of the deceased by paragraph 2 of the Fourth Schedule, *post*, which expressly provides that a widow or widower, for any period for which she or he is as such entitled to death benefit (see sections 19 and 20, *ante*), and satisfies the conditions for receipt of the allowance under this section, shall be the person entitled to it. Regulations may be made as to the priority between two or more persons satisfying the conditions (these regulations have not been made at the time of going to press), for in paragraph 1 (1) of the Fourth Schedule it is also laid down that where two or more persons satisfy the conditions, in respect of the same death, for receipt of an allowance under this section, only one of those persons shall be entitled for that period to that allowance. By including the widow and widower expressly the Schedule is confirming what is in fact effected in such cases by section 88 (2) (c), *post*, and section 3 of the Family Allowances Act, 1945; 32 Statutes Supp. 76.

(e) **Death benefit.**—Industrial death benefit is made payable by section 7 (1) (c), *ante*, where death results from the injury caused by the accident, *ibid*.

(f) **Allowance at the weekly rate of 7s. 6d.**—This was the rate originally proposed in Part II of the White Paper on Social Insurance, in September, 1944 (Cmd. 6551). It was there proposed (paragraph 46 (ii)) to have a weekly allowance of 12s. (of which 5s. was to be provided by the Exchequer) for each child who became an orphan (i.e., a child both of whose parents were dead) by the death of the insured person. But in the Bill of June, 1945, it was decided to make no specific provision for orphans, for whom allowances at a special rate would in any case be provided under the General Scheme (Part I of the White Paper (Cmd. 6550)). See the Explanatory Memorandum of June, 1945 (Cmd. 6651), paragraph 19 (b). The rate is the same as the rate of increase in injury benefit and disablement pension in respect of a first child given by section 17, *ante*. The word "allowance" indicates something supplementary to the basic "pension".

(g) **Fourth Schedule.**—See this Schedule, *post*, and note (d), *supra*. As to the general effect of the Schedule, see note (g) to section 23, *post*.

(h) **Legitimate children of male deceased person.**—This paragraph originally only included legitimate posthumous children but was sub-divided on the Report Stage to include certain other children. The intention is to cover cases where the parents are separated. In such cases a child living with its mother is treated for the purposes of the Family Allowances Act, 1945 (which applies to this Act; see section 17, note (c), *ante*), as being a child of the mother's family (Family Allowances Act, 1945, section 3 (1) (c); 32 Statutes Supp. 76) unless the parents elect, or the Minister decides, under the Schedule, paragraph 3, *ibid*. 90; that the child shall be treated as a child of the father's family. To avoid the anomalies which might arise as between the present Act, as read with the Family Allowances Act, and that Act, and to prevent a child losing the right to death benefit because it is to be treated as being of the mother's family and not of the deceased father's, this amendment was made, providing that for the purposes of this section the child should be treated as of the father's family.

To be eligible for benefit under this subsection a posthumous child must have



been a legitimate child of the marriage, conceived in wedlock. The presumption of legitimacy arising from birth during the subsistence of the marriage and preventing evidence by the spouses tending to bastardise such a child cannot apply to a child not born until after the husband's death.

Allowances for posthumous children were provided by section 39 of the Widows', Orphans', and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1230. Guardian's allowance and increases in respect of children are provided by sections 19 and 23 of the National Insurance Act, 1946.

(i) **Illegitimate child.**—This part of the subsection is similar to section 17 (2), *ante*, with the differences consequential on the benefit being death benefit. As to "residing", see note (c) to section 19, *ante*. See also section 88 (4) (b), *post*, as to temporary absence. As to who is a "child of her family", see note (c) to section 17, *ante*, and section 88 (2), *post*. As to "wholly or mainly maintained", see note (h) to section 17 and note (d) to section 18, *ante*. The "relevant accident", in relation to any benefit, means the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*). It must of course be the accident which caused the injury from which death resulted. Section 42 (1) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1231; defined "child" as including, in relation to a man, an illegitimate child, whether his or his wife's, living with him at the time of his death. Illegitimate children were also included among the "dependants" by section 4 of the Workmen's Compensation Act, 1925; Willis 186. They are also included for the purposes of guardian's allowance and child's increase in the National Insurance Act, 1946, sections 19 and 23.

(k) **A child of the deceased's family.**—This brings the child under subsection 1, *supra*. In the Bill as presented to Parliament the words were "the beneficiary's family". This was a drafting error and was amended in Committee.

**22. Parents.**—(1) A parent (a) of the deceased (b) shall be entitled to death benefit (c), if at the deceased's death (d) he or she was being to a substantial extent maintained by the deceased, or would but for the relevant accident have been so maintained (e).

(2) In the case of a parent who, at the deceased's death, was being wholly or mainly maintained by the deceased (f), or would but for the relevant accident have been so maintained, death benefit shall be a pension commencing from the death of the deceased and payable for life or, in the case of the mother, until she remarries or marries (g).

(3) In the case of a parent entitled to death benefit under subsection (1) of this section but not to a pension under subsection (2) thereof, death benefit shall be a gratuity payable, if and in such cases as regulations so provide, by instalments (h).

(4) Subject to the following provisions of this Part of this Act—

(a) the weekly rate of a pension payable to a parent under subsection (2) of this section shall be fifteen shillings for any period for which the parents are living together and are both entitled to such a pension (whether in respect of the same or another death), and twenty shillings for any other period (i);

(b) the amount of a gratuity payable to a parent under subsection (3) of this section shall be fifty-two pounds, so, however, that this paragraph shall have effect subject to the provisions of the Fourth Schedule to this Act limiting the benefit payable in respect of any death (k).

(5) In this section the expression "parent" includes a step-parent and, in a case where the deceased was illegitimate, his mother, and the expression "mother" shall be construed accordingly (l).

#### NOTES

**General effect of section.**—This section gives death benefit to parents of the deceased, subject to certain conditions, whether or not a widow's pension is payable under section 19, *ante*. The section substitutes this benefit for the right of the parents to claim Workmen's Compensation as "dependants" under section 4 of the 1925 Act; Willis 186. The benefit is payable if the parent was being "to a substantial extent maintained" by the deceased, or would have been but for the accident. If the parent was being "wholly or mainly maintained" by the deceased, or would have been but for the accident, the pension is payable for the parent's life, or, in the case of a mother, until she remarries or marries. The maximum rate of pension is 15s. a



week for each parent if they are living together and both entitled and 20s. for each parent otherwise. If a pension is not payable, the benefit is a gratuity with a maximum of £78 if there are two parents and £52 if there is one.

The White Paper on Social Insurance, Part II, September, 1944 (Cmd. 6551), proposed the conditions of incapacity, and dependence at the time of the injury which continued or would but for the injury have continued up to the death. In the Bill as presented to Parliament the condition of dependence was changed to dependence existing at the time of the death or which would have existed but for the accident. See the Explanatory Memorandum of June, 1945 (Cmd. 6651).

But the parent had to be not only "wholly or mainly maintained by" the deceased to qualify for a pension but also either "residing with" the deceased or else "permanently incapable of self-support", or, in the case of a mother, living with her husband who was so incapable. If residence or incapacity were not proved, then only an allowance of 36s. a week for thirteen weeks was payable. These were harder conditions than those laid down by the Workmen's Compensation Act and were criticised in Committee. The Minister there gave an assurance that the only test which a parent would have to satisfy would be dependence and the section was accordingly amended on the Report Stage.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy (section 28, *post*).

(a) **Parent.**—By subsection (5), *infra*, this includes, i.e. besides a father or mother, a step-parent, or the mother of a deceased person who was illegitimate.

(b) **The deceased.**—In relation to death benefit, this means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*).

(c) **Death benefit.**—Industrial death benefit is made payable by section 7 (1) (c), *ante*, where death results from the injury caused by the accident, *ibid*.

(d) **At the deceased's death.**—As to ascertainment and proof of death, see section 63, *post*.

(e) **To a substantial extent maintained by the deceased.**—These words were substituted on the Report Stage for "wholly or mainly maintained", words now used in subsection (2). Regulations made under section 35 (1), *post*, will provide for determining to what circumstances each of these expressions shall apply. The "substantial extent" will of course be something less than "wholly or mainly". The "relevant accident", in relation to any benefit, means the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*). It must of course be the accident which caused the injury from which death resulted.

(f) **Wholly or mainly maintained by the deceased.**—As to the meaning of this expression, see note (k) to section 17 and note (d) to section 18, *ante*.

(g) **Nature and duration of death benefit.**—The word "pension" is deliberately used here to indicate the character and permanence of the payment, which is expressed to be for life, or, in the case of a mother, until remarriage or marriage. Compare the "allowance" given by section 21 (1), *ante*. The reference to remarriage or marriage (the latter in the case of the mother of an illegitimate deceased) includes cohabitation with a man as his wife (section 88 (3), *post*). The rate of pension is provided for by subsection (4) (a).

(h) **Gratuity.**—This is one of the few lump sum payments given by the Act. As to the others, see sections 12 (6) and 19 (2) (a), *ante*, and 23, *post*. The amounts are set out in subsection (4) (b). Note that it may be made payable by instalments. "Regulations", by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section or under section 35 (4) (b), *post*, at the time of going to press. The instalments provided for will presumably be equal instalments.

(i) **Rates of pension.**—These rates are those proposed in Part II of the White Paper on Social Insurance (Cmd. 6551), September, 1944. As to "living together", see section 88 (4) (a), *post*. A pension in respect of another death will be payable, for example, where one parent fulfils the conditions in respect of the death of one son and another parent fulfils them in respect of the death of another son.

These are the maximum amounts and are "subject to the following provisions of this Part of this Act". See section 35 (4) (a), *post*, which provides a relationship between the pension and the deceased's contributions to the parent's maintenance.

(k) **Amount of gratuity.**—This, in the case of one parent, is £52, i.e., 20s. a week for one year. If two parents are entitled, it shall not exceed £78 (Fourth Schedule (5) (1), *post*), that is, half as much again. Note that under subsection (3) it may be made payable by instalments. These are the maximum amounts and are "subject to the following provisions of this Part of this Act". See section 35 (4) (b), *post*, which provides a relationship between the gratuity and the deceased's contributions to the parent's maintenance. As to the general effect of the Fourth Schedule, see note (g) to section 23,



*post.* As to determining the effect of the Fourth Schedule on a case under this section, see section 36 (1) (a) (vi), *post.*

(*l*) **Parent.**—This definition makes no mention of an adoptive parent, unlike the definition of "parent" in paragraph 1 (14) of the Royal Warrant (Cmd. 6799). The word there means, in relation to a deceased member of the military forces, among other things, a person who had legally adopted the member. See, however, note (*o*) to section 23 (5), *post.*

**23. Relatives.**—(1) Any such relative of the deceased as may be prescribed (*a*) shall be entitled to death benefit (*b*) if at the deceased's death (*c*)—

- (a) the relative was being wholly or mainly maintained by the deceased or would but for the relevant accident have been so maintained (*d*); or
- (b) the relative was being to a substantial extent maintained by the deceased, or would but for the relevant accident have been so maintained (*e*), and—
  - (i) in the case of a man, was permanently incapable of self-support;
  - (ii) in the case of a woman, was herself permanently incapable of self-support or was living with her husband who was permanently incapable of self-support (*f*):

Provided that this section shall have effect subject to the provisions of the Fourth Schedule to this Act limiting the benefit payable in respect of any death (*g*).

(2) Subject to the provisions of the said Fourth Schedule, in the case of a relative entitled to death benefit under the foregoing subsection, the benefit shall be a pension (*h*), if—

- (a) the relative fulfils the condition specified in paragraph (a) of that subsection; and
- (b) the relative or, in the case of a married woman living with her husband, she or her husband was at the deceased's death permanently incapable of self support (*i*);

and any such pension shall commence from the deceased's death and be payable for such period as may be determined at the time it is granted, but may, if the beneficiary or her husband, as the case may be, continues to be permanently incapable of self-support, or, in the husband's case, has died during the continuance of that incapacity, be renewed from time to time:

Provided that the said pension shall cease on the death of the beneficiary within the period for which it was granted, and, in the case of a woman, shall also cease on her marriage or remarriage within the said period or, where the pension was granted by virtue of her husband's incapacity, on the termination of their marriage otherwise than by his death or on their ceasing to live together within the said period, and shall not thereafter be renewed (*k*).

(3) Subject to the provisions of the said Fourth Schedule, in the case of a relative entitled to death benefit under subsection (1) of this section but not to a pension under subsection (2) thereof, the benefit shall be—

- (a) if the relative fulfils the condition specified in paragraph (b) of subsection (1) of this section, but not the condition specified in paragraph (a) thereof, a gratuity payable, if and in such cases as regulations so provide, by instalments (*l*); and
- (b) if the relative fulfils the condition specified in the said paragraph (a) an allowance commencing from the deceased's death and payable for thirteen weeks from his death (*m*):

Provided that the said allowance shall cease on the death of the beneficiary within the said thirteen weeks.

(4) Subject to the provisions of the said Fourth Schedule and subject also to the following provisions of this Part of this Act—



- (a) the weekly rate of a pension payable under subsection (2) of this section shall be twenty shillings ;
- (b) the amount of a gratuity payable under subsection (3) of this section shall be fifty-two pounds ;
- (c) the weekly rate of an allowance payable under subsection (3) of this section shall be thirty-six shillings (*n*).

(5) In this section the expression " relative " does not include a husband or wife, or a parent within the meaning of the last foregoing section, but (subject to the foregoing provisions of this subsection) includes a person who is only a relative by marriage or adoption and a person who would be a relative if some person born illegitimate had been born legitimate (*o*).

(6) Notwithstanding anything in the foregoing provisions of this section, a relative who was a child at the deceased's death shall not be entitled to benefit thereunder—

- (a) until he ceases to be a child ; or
- (b) unless he was at the deceased's death and is on ceasing to be a child permanently incapable of self-support ;

and any pension payable to such a relative under this section shall commence only from the date on which he ceases to be a child (*p*).

(7) Where the deceased was a man, this section shall apply to a posthumous son or daughter of his (whether legitimate or illegitimate) subject to such modifications as may be prescribed (*q*).

#### NOTES

**General effect of section.**—This section is similar to section 22, *ante*. It empowers the Minister to prescribe by regulations certain adult relatives who will be eligible for death benefit subject to certain conditions. The relatives in respect of whom he cannot prescribe are set out in subsection (5). They are persons who are provided for by sections 19, 20, 21 and 22, *ante*. Apart from these he is free to prescribe that any adult relative he thinks fit shall be included. It is intended to include the same relatives as are included by section 4 (3) of the Workmen's Compensation Act, 1925 ; Willis 187.

The benefit payable to a relative " wholly or mainly " maintained by the deceased and who is, or whose husband is, " permanently incapable of self-support ", is a pension of 20s. a week for life, or, in the case of a woman, until remarriage or marriage. If the relative was only maintained " to a substantial extent " the benefit is a gratuity of £52. If the relative was " wholly or mainly maintained " but was not " permanently incapable of self-support ", nor was her husband so incapable, the benefit is an allowance of 36s. a week for 13 weeks or until the death of the beneficiary before the end of the 13 weeks.

The section, like section 22, *ante*, was much amended on the Report Stage and the two sections are the same in many respects. Residence with the deceased was deleted as a condition of the right to benefit ; maintenance " to a substantial extent " was introduced ; the gratuity was introduced ; and provision was made for relatives who were " children " at the date of the deceased's death.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy (section 28, *post*).

Cf. section 24 (2) and (4) of the National Insurance Act, 1946.

(a) **Any such relative of the deceased as may be prescribed.**—As to who may not be prescribed as relatives, see subsection (5), *infra*. " The deceased ", in relation to death benefit, means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*). " Prescribed " means prescribed by regulations made by the Minister under the section giving the power and under sections 86 and 87, *post*, and submitted to the Industrial Injuries Advisory Council under section 61 (2), *post*.

(b) **Death benefit.**—Industrial death benefit is made payable by section 7 (1) (c), *ante*, where death results from the injury caused by the accident, *ibid*.

(c) **At the deceased's death.**—As to ascertainment and proof of death, see section 63, *post*.

(d) **Wholly or mainly maintained.**—As to the meaning of this expression, see note (*h*) to section 17 and note (*d*) to section 18, *ante*. The " relevant accident ", in relation to any benefit, means the accident in respect of which that benefit is claimed or payable. It must of course be the accident which caused the injury from which death resulted (see section 88 (1), *post*).

(e) **To a substantial extent maintained.**—As to the meaning of this expression, see note (*e*) to section 22, *ante*.



(f) **Permanently incapable of self-support.**—A person shall be deemed to be permanently incapable of self-support if, but only if, he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for the rest of his life (section 35 (5) (b), *post*). Cf. the expression "incapable of self-support". The likelihood of incapacity is then reduced to one "for a prolonged period" (section 35 (5) (a), *post*). Cf. the expression "incapable of self-support" as used and defined in the Royal Warrant, paragraph 1 (7) (Cmd. 6799). As to "living with", an expression apparently used in the Act with reference to husband and wife, as distinct from "residing with", see section 88 (4) (a), *post*.

(g) **Fourth Schedule.**—This Schedule, *post*, limits the payment of death benefit in cases where two or more persons qualify for benefit in respect of the same death, and prevents more than one person receiving a pension in respect of the same death, in whatever capacity. It also provides for payment of gratuities to persons eligible for pension but debarred by a prior claim and lays down rules for determining the amount of a gratuity and for the apportionment of gratuity as between two or more persons entitled to it. Provision is made for the case of a person eligible for a relative's pension but for the fact that he is a child and also for cases where a person dies without an award being made in his favour. As to determining the effect of the Schedule on a case under this section, see section 36 (1) (a) (vi), *post*.

(h) **Pension.**—The word is used intentionally to denote the permanent character of the payment, as distinct from the temporary allowance payable under subsection (3) (b) and the gratuity payable under subsection (3) (a). As to the effect of the Fourth Schedule, see note (g), *supra*. As to the amount of the pension, see subsection (4).

(i) **Conditions for pension.**—Note that the relative must have been wholly or mainly maintained as well as permanently incapable of self-support or have had a husband so incapable. See notes (d) and (f), *supra*.

(k) **Duration of pension.**—In the section as originally drafted the pension was expressly made payable for life or until remarriage or marriage in the case of a woman. The period is now left to be determined when the pension is granted. It will be determined by an insurance officer, a local appeal tribunal or the Commissioner (section 36 (2), *post*). Cf. section 22 (2), *ante*. If a woman was drawing a pension under this section because her husband is permanently incapable of self-support and he dies during the incapacity, she is entitled to ask for the pension to be continued for her benefit, though she has no absolute right to have it continued. If their marriage is terminated otherwise than by death, i.e., by divorce or judicial separation or by a decree of nullity, or if they cease to live together during the pension period, a pension paid to a woman on account of her husband's incapacity thereupon ceases. As to "living together", see note (f), *supra*. Any pension payable under this section ceases if the beneficiary dies during the period for which it was granted. "Beneficiary", in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*). If a woman beneficiary marries or remarries (which includes cohabitation with a man as his wife (section 88 (3), *post*)) within the pension period, her pension ceases. In each of these cases of cesser of a pension, it cannot be renewed.

(l) **Gratuity.**—This is payable to a relative who was to a substantial extent maintained by the deceased (subsection (1) (b)) or to a relative who would be entitled to a pension under this section but for the fact that some other person is entitled by reason of the Fourth Schedule (1), *post*. See paragraphs 2-5 of that Schedule. As to that Schedule, see also note (g), *supra*. Like the gratuity payable under section 22 (3), *ante*, the gratuity payable under this section may by regulations be made payable by instalments. "Regulations", by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press. As to the amount of the gratuity, see subsection (4) (b). It represents a year's pension at 20s. a week. The only other gratuities or lump sum payments payable under the Act are those payable under sections 12 (6) (slight injury), 19 (2) (widow remarrying), and 22 (3) (parent), *ante*.

(m) **Allowance.**—This is payable to a relative who can only prove that he was wholly or mainly maintained by the deceased (subsection (1) (a)). The word "allowance" is used to denote a temporary payment or one supplementary to the basic pension. If one relative is qualified for a pension under this section there does not appear to be anything in this section or in the Fourth Schedule, *post* (and see note (g), *supra*), to prevent another relative drawing an allowance under this section, though in most cases the second relative would, by the Fourth Schedule (3), be entitled to a gratuity. As to the rate of allowance, see subsection (4) (c).

(n) **Rates of pension, gratuity and allowance.**—The pension rate of 20s. is that proposed in Part II of the White Paper on Social Insurance, September, 1944 (Cmd. 6551). The £52 gratuity represents one year's pension at 20s. a week. The rate of allowance is also that proposed in Part II of the White Paper. The 36s. re-



presents the 20s. minimum rate of benefit increase payable in all cases where the beneficiary is no longer capable of work (except in cases of exceptionally severe disablement), as in sections 13 and 15, *ante*, added to the 16s. minimum benefit payable under section 18, *ante*. This rate is also payable to a widow as a pension for the first thirteen weeks under section 19 (4), *ante*. As to the relevance of the contributions which the deceased was making to the relative's maintenance, see section 35 (4), *post*. The Fourth Schedule (5), *post*, provides that the gratuity shall not exceed £52, except where no relative is entitled to a pension or where some person is entitled to a gratuity in lieu of a pension (*ibid.* (3)). In such cases the gratuity must not exceed £104. There is provision for apportioning the two gratuities.

(o) **Relative.**—This subsection enumerates those persons whom the Minister may not prescribe under subsection (1) as eligible for benefit; they are persons provided for already by sections 19, 20, 21 and 22, *ante*. Apart from these he is free to prescribe any adult relative as being eligible, and the intention is to frame regulations which will bring in as relatives adult persons who ought to be included. This was made clear in Committee. Children, whether the deceased's or not, e.g., a nephew, are provided for under section 21, *ante*, and subsections (6) and (7) of this section. The persons whom the Minister may prescribe are not limited to those mentioned in the last four lines of the subsection, for the word used is "includes", which is not exhaustive. Relatives may be connected by blood or affinity (i.e., relationship by marriage) and any of these may be brought in. See Shorter Oxford English Dictionary, 2nd. Edn., 1936, for the ordinary meaning of "relative". It appears that adoptive parents can be brought in under this subsection, though they are not expressly excluded from section 22 by subsection (5) of that section, *ante*. The question of adoptive parents was raised in Committee and though it is clear that adopted children are brought in by the combined effect of section 88 (2) (a), *post*, and section 21 (4) of the Family Allowances Act, 1945; 32 Statutes Supp. 86; it is not so clear that their adoptive parents are thereby brought in for the purposes of this section, at any rate until an adopted "child" becomes an "insured person". As to adoption, see the Adoption of Children Act, 1926; 9 Halsbury's Statutes 827. Adopted children were included in the dependants entitled to compensation under section 4 of the Workmen's Compensation Act, 1925; Willis 186; by the Adoption of Children (Workmen's Compensation) Act, 1934; Willis 196. A person "born illegitimate" would include one legitimated by the subsequent marriage of its parents, as to which, see the Legitimacy Act, 1926; 2 Halsbury's Statutes 25. See also note (o) to section 18 (5), *ante*.

(p) **Relative who was a child at deceased's death.**—Children are excluded from this section unless permanently incapable of self-support, as to which, see note (f), *supra*. As soon as they cease to be "children", however, they come within the section. As to the meaning of "child", see note (c) to section 17, *ante*. As to pensions, see subsection (2). As to posthumous children, see subsection (7). Children were expressly excluded from subsection (5) as originally drafted. But by amendment on the Report Stage they are not mentioned in subsection (5) but are expressly dealt with in subsection (6). They draw death benefit under section 21, *ante*. If a child is excluded from death benefit by reason only of subsection (6) another eligible adult relative may be awarded a pension. If the child, on ceasing to be a "child", qualifies for benefit under this subsection and that other relative is then still alive and drawing a pension, the child will be entitled to a gratuity. See the Fourth Schedule, *post*.

(q) **Posthumous children.**—This subsection applies the provisions of the section to the children of a man born after his death, subject to modifications to be prescribed (i.e. by regulations (section 88 (1), *post*)). Therefore they come within subsection (6). They draw death benefit under section 21 (2) (a) (ii), *ante*.

**24. Women having the care of deceased's children.**—(1) Where, at the date of the relevant accident (a) and throughout the period between that date and his death (b)—

- (a) the deceased (c) had a family which included a child or children (d); and
- (b) a female person not being a child was residing with the deceased and had the care of the child or one or more of the children (e);

she shall be entitled to death benefit (f) if she was being wholly or mainly maintained by the deceased at the said date and was, or would but for the accident have been, so maintained throughout the said period (g):

Provided that this subsection shall have effect subject to the provisions of the Fourth Schedule to this Act limiting the benefit payable in respect of any death (h).

(2) Where the deceased was a man, any illegitimate son or daughter of him and the said female person shall be treated for the purposes of this



section as having been a child of the deceased's family during any part of the said period during which he or she—

- (a) was a child of the female person's family ; and
- (b) was, or would but for the relevant accident have been, wholly or mainly maintained by the deceased (i).

(3) Benefit under this section shall be an allowance commencing from the death of the deceased and payable for any period during which the beneficiary has the care of the child or one or more of the children aforesaid, unless or until the beneficiary marries or remarries, and, subject to the following provisions of this Part of this Act, the weekly rate of any such allowance shall be twenty shillings (k).

#### NOTES

**General effect of section.**—This section gives death benefit in the form of an allowance of 20s. a week to a woman residing with the deceased and having the care of his children, if she was maintained by him. The allowance is to continue while the woman has the care of the children or until she marries.

Such a woman was not within the class of "dependants" enumerated in section 4 of the Workmen's Compensation Act, 1925 ; Willis 186.

The benefit is not payable where a pension is payable to a widow, widower or parent of the deceased.

Benefit under this section cannot be assigned or charged, nor does it pass to a trustee in bankruptcy (section 28, *post*).

Cf. section 24 (2) (c) of the National Insurance Act, 1946.

(a) **Relevant accident.**—In relation to any benefit this means the accident in respect of which the benefit is claimed or payable (section 88 (1), *post*). The accident must, of course, cause the injury from which death resulted.

(b) **Death.**—As to ascertainment and proof of death, see section 63, *post*.

(c) **The deceased.**—In relation to death benefit this means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*).

(d) **A family which included a child or children.**—See, as to this, section 88 (2) (c), *post*, and note (c) to section 17, *ante*.

(e) **Female person residing with the deceased and having the care of the children.**—Such a person must not herself be a "child" within section 88 (2) (a), *post*, and section 2 of the Family Allowances Act, 1945 ; 32 Statutes Supp. 75. At present this means that she must not be under fourteen years old. See note (c) to section 17, *ante*. The deceased's own daughter cannot be a person eligible for benefit under this section. She may be eligible under section 23, *ante*. Such a person must "reside with" the deceased. As to this, see note (c) to section 19, *ante*, and section 88 (4) (b), *post*, as to temporary absence. "Having the care of" obviously means the full-time care, because the woman must have been residing with the deceased. It does not, of course, mean the same as "custody" in matrimonial cases. Cf. "care and control" as ordered in *Green v. Green*, [1929] P. 101 ; Digest Supp.

(f) **Death benefit.**—Industrial death benefit is made payable by section 7 (1) (c), *ante*, where death results from the injury caused by the accident, *ibid*.

(g) **Wholly or mainly maintained.**—As to the meaning of this expression, see note (k) to section 17 and note (d) to section 18, *ante*. Note that this condition has to be fulfilled, in addition to residence with the deceased and care of his children, to make the woman eligible for benefit.

(h) **Fourth Schedule.**—The relevant provisions of the Fourth Schedule, *post*, enact that where two or more persons satisfy the conditions, in respect of the same death, for receipt of an allowance under this section, only one shall be entitled to it. They further enact that no person shall be entitled to an allowance under this section and to a pension, gratuity or allowance under section 23, *ante* (relatives). There are also provisions where death occurs before benefit is awarded.

(i) **Illegitimate child.**—This subsection is similar to section 21 (2), *ante*, which gives death benefit in respect of an illegitimate child. This subsection gives death benefit to the mother of such a child, if the father was the deceased, and if the child was "a child of the female person's family" and was, or would but for the relevant accident have been wholly or mainly maintained by the deceased. As to who is a "child of the deceased's family" and "a child of the female person's family", see section 88 (2), *post*, and note (c) to section 17, *ante*.

(k) **Rate of allowance.**—Benefit under this subsection, as under section 21, *ante*, is an "allowance", a word used intentionally to denote a payment supplementary to the basic pension. As to the limitations to the payment of the allowance, see note (h), *supra*. "Marries or remarries" includes cohabitation with a man as his wife (section 88 (3), *post*). The rate of 20s. a week is that originally proposed in Part II of the White Paper on Social Insurance (Cmd. 6551) of September, 1944.



*Obligations of claimants and beneficiaries, and of employers*

**25. Obligations of claimants and beneficiaries.**—(1) Regulations (a) may provide—

- (a) for requiring the prescribed notice of any accident in respect of which benefit may be payable to be given within the prescribed time by the insured person (b), or, where within that time his death results from the accident (c), by such other person as may be prescribed, to the insured person's employer or other prescribed person (d);
- (b) for requiring claims for benefit to be made within the prescribed time and in the prescribed manner, and for requiring claimants (e) to furnish to the prescribed person any information required for the determination thereof or of any question arising in connection therewith (f);
- (c) for requiring beneficiaries (g) to give notice to the prescribed person of any change of circumstances affecting the continuance of the right to benefit or to the receipt thereof (h), and to furnish as aforesaid any information required for the determination of any question arising in connection with the award (i).

(2) Regulations (k) may further provide for requiring claimants for, and beneficiaries in receipt of (l), injury benefit or disablement benefit (m)—

- (a) to submit themselves from time to time to medical examination for the purpose of determining the effect of the relevant accident, or the treatment appropriate to the relevant injury or loss of faculty (n);
- (b) to submit themselves from time to time to appropriate medical treatment for the said injury or loss of faculty (o);
- (c) to attend any vocational training course or industrial rehabilitation course provided under the Disabled Persons (Employment) Act, 1944, which in the opinion of the Minister of Labour and National Service is appropriate in their case (p).

(3) Regulations made under this section requiring persons to submit themselves to medical examination or treatment may—

- (a) require those persons to attend at such places and at such times as may be required; and
- (b) with the consent of the Treasury, provide for the payment by the Minister to those persons of travelling and other allowances (including compensation for loss of remunerative time) (q).

(4) Without prejudice to subsection (2) of this section, it shall be the duty of any person claiming or entitled to injury benefit in respect of any injury not to behave in any manner calculated to retard his recovery (r).

**NOTES**

**General effect of section.**—This is one of the many sections empowering the Minister to make regulations on matters of great importance. Note the permissive word "may". Similar sections have appeared in other Acts; for example, section 65 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1103; section 32 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1225; and now section 28 of the National Insurance Act, 1946. The regulations contemplated by the last three subsections are of a new type. The penalties which are intended to enforce the rules of conduct and behaviour there laid down are to be found in section 32 (2), *post*. They are forfeiture of benefit or suspension of proceedings on the claim or payment of benefit.

Note that regulations made under this section "may provide" for a number of matters which are set out. The decision, which matters to provide for, is left to the Minister, who drafts the regulations and submits them to the Industrial Injuries Advisory Council under section 61 (2), *post*. They are then laid before Parliament for 40 days and can during that time be annulled by either House.

An amendment was moved in Committee, to add a proviso to subsection (1), modelled on section 14 (1) (b) of the Workmen's Compensation Act, 1925; Willis 415;



to the effect that failure to give notice of accident or to make a claim in the prescribed manner or time should not be a bar to a claim if it was occasioned by mistake, absence from the United Kingdom, or other reasonable cause. This amendment was withdrawn when it was pointed out that section 32 (2), *post*, the section which provides for forfeiture of injury benefit as a penalty for failing to comply with the requirements of the present section, only applies if the failure is "without reasonable cause", which clearly covers cases contemplated by the amendment, and further that a claimant can appeal on this point from the insurance officer to the local appeal tribunal (section 46, *post*), and, with leave, to the Commissioner (section 47, *post*).

The penalties for breach of the regulations will presumably be provided by the regulations themselves. See section 67 (2), *post*.

Subsections (2) and (4) were fully debated on the Report Stage and eventually the concluding words of subsection (4) were deleted by amendment as imposing an unfair restriction of liberty on insured persons. The words were:—

"and in particular to observe—

- (a) any directions given him by the medical practitioner in attendance; [originally 'in charge of his case', but amended in Committee] and
- (b) any prescribed rules of behaviour".

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. By section 87 they have to be laid before Parliament "as soon as may be after they are made" and either House may annul them within 40 days. They also have to be first referred under section 61 (2), *post*, to the Industrial Injuries Advisory Council for consideration and advice. Regulations have not been made at the time of going to press. See also General note, *supra*.

(b) **Prescribed notice of any accident.**—"Prescribed" means prescribed by regulations (section 88 (1), *post*). "Accident in respect of which benefit may be payable" means an accident causing personal injury to the insured person and arising out of and in the course of his employment (section 7 (1), *ante*). "May be payable" puts the burden on the claimant of deciding what accidents may give him a right to benefit. See note (d) to section 26, *post*. As to "insured person", see section 1, *ante*, and section 88 (1), *post*.

Notice of accident was required by sections 14 and 15 of the Workmen's Compensation Act, 1925; Willis 414, 416; and there are many authorities on what constituted such notice. But until regulations are made it is impossible to say whether any of these authorities will be relevant.

(c) **Death results from the accident.**—As to the ascertainment and proof of death, see section 63, *post*. The expression "results from" means here, of course, "results from the injury caused by the accident". See section 7 (1) (c), *ante*, and the authorities on the expression "where death results from the injury" in section 8 (1) of the Workmen's Compensation Act, 1925; Willis 237-246, 273-274.

(d) **Employer or other prescribed person.**—"Employer" is not defined in the Act, but see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*. As to "insurable employment", see section 1, *ante*, First Schedule, *post*, and notes thereto. "Employer" was defined in section 5 of the Workmen's Compensation Act, 1925; Willis 207; a narrower definition than that inferentially given by the First Schedule, *post*. As to "employment" in the National Insurance Act, 1946, see section 1 (2) of that Act.

(e) **Claimants.**—"Claimant" means a person claiming benefit, and includes an applicant for a declaration that an accident was or was not an industrial accident (section 49, *post*) and, in relation to the review of an award or decision (sections 37, 40, and 50, *post*), a beneficiary under the award or affected by the decision, and "claim" is to be construed accordingly (section 88 (1), *post*).

(f) **Determination of questions.**—See section 36, *post*.

(g) **Beneficiaries.**—"Beneficiary", in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*).

(h) **Change of circumstances.**—A change of circumstances had to be shown before a review of weekly payments could be held under section 11 of the Workmen's Compensation Act, 1925; Willis 365. Subject to anything in the regulations which are to be made, the authorities on what constitutes a change of circumstances; Willis 369 *et seq.*; should prove helpful here. It is of course a question of fact in each case. See also the expression "relevant change of circumstances", which occurs in section 50 (1) (b), *post*.

(i) **Determination of questions.**—See section 36, *post*. "The award" is a general term, covering all decisions under that section that an insured person is entitled to benefit. Cf. an "award" of compensation under Rule 30 of the Workmen's Compensation Rules, 1926; Willis 817.

(k) **Regulations.**—See note (a), *supra*. These regulations have not been made at the time of going to press.

(l) **Claimants and beneficiaries.**—See notes (e) and (g), *supra*.



(m) **Injury benefit or disablement benefit.**—See sections 11–18, *ante*.

(n) **Medical examination.**—This includes bacteriological and radiographical tests and similar investigations (section 88 (1), *post*). Similar provisions appeared in sections 17–20 of the Workmen's Compensation Act, 1925; Willis 462–464. Until these regulations are made it is impossible to say how far the decisions on those sections will be relevant here, though probably those on refusal to submit or obstruction; Willis 467; will apply. The great difference is of course that in those cases the doctor was the employer's. Compare "medical examination" with "medical treatment" mentioned here and in paragraph (b).

The "relevant accident" and "relevant injury" mean respectively, in relation to any benefit, the accident and injury in respect of which that benefit is claimed or payable. The "relevant loss of faculty" means the loss of faculty resulting from the relevant injury (section 88 (1), *post*). As to loss of faculty, see section 7, note (p), and note (e) to section 12, *ante*.

(o) **Medical treatment.**—This means medical, surgical or rehabilitative treatment (including any course of diet or other regimen) (section 34 (1), *post*). See also sections 15 and 16, *ante*. The Workmen's Compensation Acts contained no similar provision as to treatment. Those Acts were far less concerned than the present Act with rehabilitating the injured person.

(p) **Vocational training or industrial rehabilitation courses.**—As to these, see the Disabled Persons (Employment) Act, 1944; 37 Halsbury's Statutes 346; and Introductory Note to Part VIII of the General Introduction, *ante*. See also note (d) to section 74, *post*. As to the Minister of Labour and National Service, see note (b) to section 74, *post*.

(q) **Travelling and other allowances.**—There was no such provision as this in the Workmen's Compensation Acts. Indeed it was held in *Richards v. United National Collieries*, [1927] W.N. 194; 20 B.W.C.C. 465; Digest Supp.; Willis 483; that an employer could not be ordered to pay the travelling expenses of a workman as a condition precedent to his attendance for examination by a medical referee. Paragraph (b) was criticised in Committee inasmuch as "with the consent of the Treasury", being at the beginning of the paragraph, appeared to mean that Treasury consent was necessary in each case to the payment of travelling allowances, clearly not the intention of the subsection. "The Minister" means the Minister of National Insurance (section 88 (1), *post*).

(r) **Duty of claimant or beneficiary.**—This subsection was much criticised in Committee, and on the Report Stage. In the original Bill of June, 1945, the matters now covered by this subsection were left to be dealt by regulation. In the Bill of October, 1945, the only part left to be so dealt with were "rules of behaviour" which might be "prescribed", i.e., presumably prescribed by regulations (section 88 (1), *post*). It was, however, pointed out by the Solicitor-General that the Act now contained section 86, *post*, which provided that any regulations which might be made might be made not only as extensive but also as restrictive as the Minister thought fit, and further that section 32 (2), *post*, which provided the penalty for failing to comply with the present subsection, namely forfeiture of benefit or suspension of proceedings on the claim or payment, only applied if the insured person's default was "without reasonable cause". Any regulations made would, under section 88, *post*, have to be first referred to the Industrial Injuries Advisory Council under section 61 (2), *post*, and then laid before Parliament for 40 days under section 86, *post*.

However, there was much criticism on the Report Stage and the subsection was amended to its present form. See General note, *supra*.

Decisions on section 9 of the Workmen's Compensation Act, 1925; Willis 260; are relevant in so far as they deal with incapacity through neglect to follow medical advice or remedial measures; Willis 272; or through refusal to undergo surgical operation or treatment; Willis 275.

**26. Obligations of employers.**—Regulations (a) may provide for requiring employers (b)—

- (a) to make reports, to such person and in such form and within such time as may be prescribed (c), of accidents in respect of which benefit may be payable (d);
- (b) to furnish to the prescribed person any information required for the determination of claims or of questions arising in connection with claims or awards (e);
- (c) to take such other steps as may be prescribed to facilitate the giving notice of accidents (f), the making of claims and the determination of claims and of questions arising as aforesaid (g).

#### NOTES

**General effect of section.**—This section is another of the many sections giving the Minister power to make regulations. Section 25, *ante*, gives power to make regu-



lations as to the obligations of claimants and beneficiaries. This section gives power to make regulations as to the obligations of employers.

The Workmen's Compensation Act, 1925, section 42; Willis 580; required employers in certain industries to make annual returns of injuries in respect of which compensation had been paid during the year and the amount of the compensation. That section provided penalties for default. In this Act the regulations themselves will presumably provide the penalties. See section 67 (2), *post*.

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they have to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred in draft to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(b) **Employers.**—"Employer" is not defined in the Act, but see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*. As to "insurable employment", see section 1, *ante*, First Schedule, *post*, and notes thereto. "Employer" was defined in section 5 of the Workmen's Compensation Act, 1925; Willis 207; a narrower definition than that inferentially given by the First Schedule, *post*. Cf. section 1 (2) of the National Insurance Act, 1946.

(c) **Prescribed.**—This means prescribed by regulations (section 88 (1), *post*).

(d) **Accidents in respect of which benefit may be payable.**—This means accidents causing personal injury (which includes industrial diseases; Part IV, *post*) and arising out of and in the course of the employment of the insured person (section 7 (1), *ante*). "May be payable" puts on the employer the burden of deciding what accidents may entitle an insured person to benefit. Presumably the regulations will give some guidance as to this, failing which the employer's safest course will be to report all accidents, however trivial, which cause an insured person to lose a day's work, for though there is a three-day waiting period under section 11, *ante*, an injury, however slight, may be later aggravated so as to cancel out the three waiting days under section 11 (1), proviso. As to "benefit", see, generally, section 7 and sections 11–24, *ante*.

(e) **Determination of questions.**—See section 36, *post*. "Claims" includes applications for a declaration that an accident was or was not an industrial accident (section 49, *post*) and, in relation to the review of an award or decision (sections 37, 40 and 50, *post*), a claim by the beneficiary under the award or affected by the decision (section 88 (1), *post*). "Awards" is a general term, covering all decisions under section 36, *post*, that an insured person is entitled to benefit. Cf. an "award" of compensation under Rule 30 of the Workmen's Compensation Rules, 1926; Willis 817.

(f) **Notice of accidents.**—Cf. section 25 (1) (a), *ante*, and note (b) thereto.

(g) **Making and determination of claims, etc.**—See note (e) to section 25, *ante*, and note (e), *supra*.

*Payment of benefit, and provisions as to adjustments,  
disqualifications, etc.*

**27. Administration of benefit.**—(1) Provision may be made by regulations (a) as to the time and manner of payment of benefit (b), and regulations made jointly by the Minister and the Postmaster General may provide for payment thereof through the Post Office (c).

(2) Regulations made under this section as to the time of payment of benefit may provide—

(a) notwithstanding anything in this Act (d), for adjusting the commencement and termination of benefit, or of changes in the rate of benefit, so that, except in the case of injury benefit (e), payments shall not be made in respect of periods less than a week or at different rates for different parts of a week (f);

(b) for extinguishing the right to any sum payable by way of benefit where payment thereof is not obtained within six months or such shorter period as may be prescribed from the time at which that sum is receivable in accordance with the regulations (g).

(3) Regulations (h) may also provide—

(a) for enabling a person to be appointed to exercise, on behalf of a claimant or beneficiary (i) who is a child (k) or who may be or become unable for the time being to act (l), any right or power which the claimant or beneficiary may be entitled to exercise under this Act, and for authorising a person so appointed to



receive any sum payable by way of benefit on behalf of the claimant or beneficiary (*m*);

- (b) in connection with the death (*n*) of a claimant or beneficiary, for enabling the claim to be proceeded with for authorising payment or distribution of benefit to or amongst persons claiming as personal representatives (*o*), legatees (*p*), next of kin (*q*) or creditors (*r*) of the claimant or beneficiary (or, in cases of illegitimacy of deceased persons, to or amongst others) (*s*), and for dispensing with strict proof of the title of persons so claiming (*t*).

(4) Where any sum payable by way of benefit would, apart from this provision, include a fraction of a penny, that fraction shall be disregarded if it is less than a halfpenny and shall be treated as a penny if it is a halfpenny or more (*u*).

### NOTES

**General effect of section.**—This is yet another section giving the Minister power to make regulations. Under this section they "may be" made (note the permissive words) for a variety of purposes connected with the administration of benefit, in particular the payment of it, the methods of drawing it and the time limits within which it must be drawn. The section makes no provision for repayment of benefit improperly received, such as was found in section 51 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 529; and in section 71 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1106. No such provision appears in this Act except section 52 and the Second Schedule, Part III (2) (b), *post*. Section 32, *post*, provides only for forfeiting the right to benefit and for suspending any further payment of benefit. Section 70, *post*, appears only to provide for the recovery of unpaid contributions. Subsection (3) is only intended to give the Minister power to make regulations where the circumstances are such that some assistance of that kind is required.

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they have to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred in draft to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(b) **Time and manner of payment of benefit.**—See subsection (2) and notes thereto. Detailed regulations for administration will be necessary to ensure smooth and efficient payment of benefit, especially where it is to be paid through the Post Office. As to benefit generally, see sections 7 and 11–24, *ante*.

(c) **Payment through Post Office.**—Regulations made jointly by the Minister and the Postmaster-General appear to be also subject to the procedure laid down in sections 61 and 87, *post*, as to which, see note (a), *supra*. This subsection is very similar to section 50 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 529; a section which also provided for making claims to benefit through the Post Office. Under that section the Unemployment Insurance (Post Office Claimants) Regulations, 1936 (S.R. & O. 1937 No. 813), relating to claims to and payment of benefit in rural areas, were made. See now, however, section 46 (1) of the National Insurance Act, 1946; which also provides for payment of benefit through the Post Office. As to sale of insurance stamps through the Post Office, see section 66, *post*. Cf. also section 7 of the Family Allowances Act, 1945; 32 Statutes Supp. 79; as to payment of allowances through the Post Office.

(d) **Notwithstanding anything in this Act.**—These words are put in to refer to the sections under which entitlement to benefit becomes effective on particular days, e.g., under section 11, *ante*, on any day on which an insured person is incapable of work as the result of the relevant accident; under section 11 (4), *ante*, the injury benefit period is 156 days and by section 12 (1), *ante*, disablement benefit becomes payable immediately at the end of that period, or where the beneficiary elects to treat the period as ending sooner under section 11 (4); where there is death benefit payable under sections 19–24, *ante*, it starts from the date of death.

(e) **Injury benefit.**—See section 11, *ante*. This is the first benefit payable after the relevant accident and is payable immediately, subject to the three-day waiting period, as to which, see *ibid.*, and in respect of each day of incapacity. It is therefore excepted from the general rule of weekly payments.

(f) **Payments to be weekly.**—This is the basic principle of the Act, except in the case of injury benefit, *supra*. Since all benefit, it is intended, shall be paid through the Post Office, not only under this but under other Acts, it will be essential to provide for certain payments to be made on certain days, otherwise administrative chaos, and delay to beneficiaries, would result. For example, a child might be born on a Wednesday, entitling a beneficiary to an immediate increase in benefit of 7s. 6d. under



section 17, *ante*. Payment of benefit will not start until the following Tuesday, though of course the days in arrear will be paid for *pro rata*.

(g) **Extinguishing right to benefit not drawn.**—This provision is also put in for purely administrative reasons. There must obviously be some such time limit. Benefit will be drawn by means of order books of twenty-six or fifty-two vouchers (for the half or full year) and if a beneficiary were, after several months, to present, say, fifty vouchers for 20s. each at a country Post Office there would not be the money available to honour them. Compare "extinction" with "disqualification" and "suspension", used in section 32, *post*. The apparent hardship of these provisions is mitigated by the beneficiary's right to appeal to the insurance officer under section 45, *post*, and from him to the local appeal tribunal under section 46, *post*, and, with leave, to the Commissioner under section 47, *post*. Further the regulations, by section 86, *post*, can be made as extensive or restrictive as the Minister thinks fit and will probably provide for cases where a beneficiary has had reasonable cause for delay or default. Cf. section 32 (2), *post* (failure without reasonable cause to comply with section 25 (4), *ante*).

(h) **Regulations.**—No regulations have been made under this subsection at the time of going to press.

(i) **Claimant or beneficiary.**—"Claimant" means a person claiming benefit and includes an applicant for a declaration that an accident was or was not an industrial accident (section 49, *post*) and, in relation to the review of an award or decision (section 50, *post*), a beneficiary under the award or affected by the decision (section 88 (1), *post*). "Beneficiary", in relation to any benefit, means the person entitled to that benefit (*ibid.*).

(k) **Child.**—This means a person who would be treated as a child for the purposes of the Family Allowances Act, 1945; 32 Statutes Supp. 75. See note (c) to section 17, where the matter is fully discussed.

(l) **Unable to act.**—This is obviously intended to cover cases of temporary or permanent physical or mental infirmity.

(m) **Person authorised to receive benefit.**—The appointment will presumably be made by the insurance officer (see sections 44, 45, *post*) on the recommendation either of the claimant or beneficiary or some other responsible person, or by the officer as he thinks best.

(n) **Death.**—As to ascertainment and proof of death, see section 63, *post*. The purpose of regulations made under this paragraph will be to protect and provide for people in cases where there is a small estate with no personal representative and nobody immediately available to deal with the claim or benefit.

(o) **Personal representatives.**—This means executors under a will or administrators under letters of administration. See Administration of Estates Act, 1925, section 55 (1) (xi); 8 Halsbury's Statutes 358; and, generally, 14 Halsbury's Laws (2nd Edn.) 160.

(p) **Legatees.**—This means persons or other objects taking a benefit under a gift of personal estate. See 34 Halsbury's Laws (2nd Edn.) 9.

(q) **Next of kin.**—This means, unless the gift makes no reference to intestacy or the Rules of Distribution under the Administration of Estates Act, 1925, the persons who would take beneficially under the Rules. These Rules are contained in section 46 of the Administration of Estates Act, 1925; 8 Halsbury's Statutes 346. If there is no reference to intestacy or the Rules, it means the nearest kindred in blood (*Brandon v. Brandon* (1819), 3 Swan. 312; 44 Digest 891, 7497; including the half-blood; *Cotton v. Scarancke* (1815), 1 Madd. 45; 40 Digest 580, 1157. See also *Halton v. Foster* (1868), 3 Ch. App. 505; 44 Digest 876, 7324).

(r) **Creditors.**—This will presumably have at least as wide a meaning as that given by the Bankruptcy Acts. As to creditors entitled to prove in bankruptcy, see Bankruptcy Act, 1914, sections 30-36; 1 Halsbury's Statutes 636 *et seq.*

(s) **Illegitimacy of deceased persons.**—As to illegitimacy, see, generally, 2 Halsbury's Laws (2nd Edn.) 557 *et seq.*

(t) **Dispensing with strict proof of title.**—This means such strict proof of title as is required by the particular Act affecting the capacity in which these persons claim.

(u) **Fractions of a penny.**—The main purpose of this provision is obviously convenience of administration. Sums of this kind might work out in cases where there were odd days, parts of a week, for which benefit was payable at some assessed percentage under section 12, *ante*. Cf. the provision that fractions of a day are to be disregarded, which was contained in paragraph 16, proviso (i) of the Unemployment Insurance Benefit Regulations, 1936; S.R. & O. 1936 No. 335.

**28. Benefit to be inalienable.**—(1) Subject to the following provisions of this Act (a), every assignment of (b), or charge on (c), benefit (d), and every agreement (e) to assign or charge benefit, shall be void (f), and,



on the bankruptcy (*g*) of a beneficiary (*h*), the benefit shall not pass to any trustee or other person acting on behalf of his creditors (*i*).

(2) In calculating for the purposes of section five of the Debtors Act, 1869 (*k*), the means of any beneficiary, no account shall be taken of any increase of injury benefit or disablement benefit in respect of a child (*l*) or of any death benefit (*m*).

# NOTES

**General effect of section.**—This section prevents any assignment of or charge on benefit and also prevents benefit becoming part of a bankrupt's estate. Similar provisions appear in a number of recent Acts, mentioned in the notes, *infra*. The section also provides that neither any increase of benefit in respect of a child nor any death benefit shall be taken into account in assessing a beneficiary's means for the purposes of a judgment summons under the Debtors Act.

No mention is made in the section of the Money Payments (Justices Procedure) Act, 1935; 28 Halsbury's Statutes 125; which relates to the enforcement by justices of the payment of money due by virtue of convictions or orders of courts of summary jurisdiction.

(a) **Subject to the following provisions of this Act.**—This may refer to section 31, *post*, which empowers the Minister to pay out of the Industrial Injuries Fund to certain authorities granting relief the amount of the relief by which benefit is reduced. It also probably refers to death benefit (sections 19–24, *ante*).

(b) **Assignment.**—This includes both legal assignments under section 136 of the Law of Property Act, 1925; 15 Halsbury's Statutes 313; and equitable assignments. As to assignments, see, generally, 4 Halsbury's Laws (2nd Edn.) 425 *et seq.*, and 7 Halsbury's Laws (2nd Edn.) 301 *et seq.* A legal assignment is an agreement whereby the assignor assigns to the assignee his rights against a third party or parties under a contract with the third party or parties. It is only valid as such if it complies with section 136, *supra*. An equitable assignment is one which does not comply with section 136 and therefore only gives the assignee a right in equity. There may also be assignments under particular Acts, such as the Bills of Exchange Act, 1882; 2 Halsbury's Statutes 35; or under the law merchant or under the privileges given by law to the Crown. An agreement to assign is a good equitable assignment. Assignment by operation of law, e.g., on death, is not within this section except in so far as subsection (2) provides for bankruptcy.

(c) **Charge.**—A charge is either a legal charge by way of legal mortgage under section 87 of the Law of Property Act, 1925; 15 Halsbury's Statutes 265; or an equitable charge which does not transfer the property, but gives a right to payment out of it. An agreement to charge is a valid equitable charge. See, generally, 23 Halsbury's Laws (2nd Edn.) 222 *et seq.*

(d) **Benefit.**—As to benefit generally, see section 7, *ante*, and, in detail, sections 11–24, *ante*. The word means benefit under this Act (section 88 (1), *post*).

(e) **Agreement.**—This means oral agreements as well as agreements in writing, or under seal, i.e., deeds. Whether or not they would be void, voidable or unenforceable apart from this section is irrelevant. The section makes them all void. See, generally, as to agreements, 7 Halsbury's Laws (2nd Edn.) 61 *et seq.*, and see notes (b) and (c), *supra*.

(f) **Void.**—Note that the section does not make such agreements "illegal" nor impose any penalty on the parties to them. They are merely "void", i.e., of no effect. See, generally, 7 Halsbury's Laws (2nd Edn.) 147 *et seq.*

(g) **Bankruptcy.**—In this context the word clearly means the adjudication of the debtor bankrupt under section 18 of the Bankruptcy Act, 1914; 1 Halsbury's Statutes 619; for it is at that moment that his property (which clearly includes money; sections 38 and 167 of the Act; *ibid.* 643, 705) becomes divisible among his creditors and vests in a trustee, which means (by section 167; *ibid.* 705) the trustee in bankruptcy of a debtor's estate.

(h) **Beneficiary.**—In relation to any benefit, this means the person entitled to that benefit (section 88 (1), *post*).

(i) **Any trustee or other person acting on behalf of his creditors.**—This will include not only the trustee appointed under section 19 of the Bankruptcy Act, 1914; 1 Halsbury's Statutes 620; but also the Official Receiver acting as trustee under sections 53, 74 (1), 78 (4), 129 (i) or 130 (4); *ibid.* 654, 669, 670, 689, 690.

A provision similar to this subsection was contained in section 53 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 529; also in section 7 (1) of the Old Age Pensions Act, 1936; 29 Halsbury's Statutes 1055; also in section 68 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1106; also in section 36 (1) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1228. Now section 10 (1) of the Family Allowances Act, 1945; 32 Statutes Supp. 80; and section 32 of the National Insurance Act, 1946, are both in



similar terms and are the ones in force, though the latter contains no provision similar to subsection (2) of this section.

(h) **Section 5 of the Debtors Act, 1869.**—For this section, see 1 Halsbury's Statutes 575. It gives a High Court Judge or a County Court Judge or their deputy the power to commit a judgment debtor to prison for not more than six weeks for default in payment of a judgment debt or an instalment thereof, if it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same. The procedure is by way of judgment summons under R.S.C. Order 42, Rule 3; in the High Court; Annual Practice, 1945, 765. See also Bankruptcy Rules 374 and 375; 1 Halsbury's Statutes 776. For the County Court procedure, see Order 25, Rules 33-66; County Court Practice, 1946, 422 *et seq.* See, generally, 2 Halsbury's Laws (2nd Edn.) 447 *et seq.* In the application of the Act to Scotland this subsection has effect as if for the reference to section 5 of the Debtors Act, 1869, there were substituted a reference to section 4 of the Civil Imprisonment (Scotland) Act, 1882.

A provision similar to this subsection was contained in section 7 (2) of the Old Age Pensions Act, 1936; 29 Halsbury's Statutes 1055; also in section 36 (2) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1228; and in section 10 (2) of the Family Allowances Act, 1945; 32 Statutes Supp. 80. No such provision appears in the National Insurance Act, 1946.

(l) **Increase of injury benefit or disablement benefit in respect of a child.**—This increase is given by section 17, *ante*. As to injury benefit, see section 11, *ante*. As to disablement benefit, see section 12, *ante*. As to the definition of "child", see section 88 (1), *post*, and note (c) to section 17, *ante*. Note that it is only this increase, and any death benefit, which is not to be taken into account. All other benefit and increases are to be taken into account.

(m) **Death benefit.**—See, as to this, sections 19-24, *ante*.

**29. Adjustments for successive accidents.**—(1) Where a person suffers two or more successive accidents against which he is insured under this Act (a),—

(a) he shall not for the same period be entitled (apart from any increase of benefit such as is mentioned in the following subsection (b)) to receive benefit (c), either by way of injury benefit (d) and a disablement pension or pensions (e) or by way of two or more disablement pensions, at an aggregate weekly rate exceeding—

(i) if the beneficiary is over the age of eighteen or is for the time being entitled to an increase of benefit in respect of a child or adult dependant, forty-five shillings (f);

(ii) if the beneficiary is between the ages of seventeen and eighteen and not for the time being entitled as aforesaid, thirty-three shillings and ninepence (g);

(iii) if the beneficiary is under the age of seventeen and not for the time being entitled as aforesaid, twenty-two shillings and sixpence (h);

(b) the provision of this Act excluding the right to injury benefit for the first three days of incapacity resulting from the relevant accident unless there are twelve such days during the injury benefit period shall, in relation to two or more accidents happening at intervals not greater than thirteen weeks as the result of each of which he is incapable of work on some day during its injury benefit period, apply so as to permit of there being taken into account, for the purpose of making up the said twelve days in the case of each of those accidents, any days which may be so taken into account in the case of any other of them (i);

(c) regulations (k) may provide for adjusting—

(i) injury benefit or disablement benefit, or the conditions for the receipt thereof, in any case where he has received or may be entitled to a disablement gratuity (l);

(ii) any increase of benefit such as is mentioned in the following subsection, or the conditions for the receipt thereof (m).



(2) The increases of benefit referred to in the foregoing subsection are increases in the rate of injury benefit or a disablement pension under sections thirteen, fifteen, seventeen and eighteen of this Act (*n*), and for the purposes of paragraph (a) of that subsection include also, in a case to which subparagraph (ii) or (iii) of that paragraph applies, any increase in the rate of a disablement pension under section fourteen of this Act (*o*).

# NOTES

**General effect of section.**—The effect of this section is to maintain 45s. as the maximum adults' weekly rate of benefit under the Act, and therefore 100 per cent. disablement as the maximum amount of disablement recognised by the Act, however many accidents an insured person may suffer. The section was much criticised in Committee as being a retrograde step from the Workmen's Compensation Acts, under which a workman injured in two successive accidents could draw two sums by way of compensation, assessed on the partial incapacity resulting from each accident, which amounted together to more than he would have got for total incapacity due to one accident. But it was pointed out that whereas Workmen's Compensation was based on earnings, the principle of the present Act was a flat rate, with a fixed maximum basic pension of 45s. But for this section a beneficiary could claim a fresh 45s., or some lower sum depending on the percentage assessment of his fresh disablement, for each successive accident. Under it a person suffering a subsequent accident will draw 45s. injury benefit for the injury benefit period of 26 weeks under section 11, *ante*, plus dependants' allowances, and will then be assessed for disablement pension under section 12 (7), *ante*, taking into account the combined effect of the two accidents, an assessment which may be higher than would two separate assessments. Combined assessment was not possible under the Workmen's Compensation Acts. See the authorities in Willis 268–269. The present Act follows what has been the practice of the Royal Warrant for the last 25 years. See the Royal Warrant of April, 1946 (Cmd. 6799), paragraph 9 (proviso). The maximum rate for persons under 18 is 33s. 9d. if they are between 17 and 18 and 22s. 6d. if they are under 17. Amendments were made to the section on the Report Stage to include the 17–18 age group and give them three-quarter-rate benefit in accordance with the amendments to the earlier sections. A provision was also added giving some relief with respect to the "waiting days" in cases where two incapacitating accidents occur to the same person within 13 weeks. Subsection (2) was added in Committee in the House of Lords, with consequential amendments to subsection (1) when it was discovered that owing to drafting errors the special hardship allowance under section 14, *ante*, would not be payable in the case of a second accident, and that a person entering hospital a second time would be able to draw benefit at some 190 per cent. of the basic rate (see section 16, *ante*). The hardship allowance is additional to the 100 per cent. pension.

When this Act and the National Insurance Act are both working, it is intended, where there is a second accident, to give the insured person the option of receiving whichever is the greater, either the injury benefit of 45s., or his pension under this Act for the first accident plus sickness benefit for the second accident under the National Insurance Act, 1946 (419 H. of C. Official Report 1479: the Minister on the Third Reading of the Bill). (See section 11 of the Act.)

(a) **Accidents against which he is insured under this Act.**—These are accidents arising out of and in the course of his employment. See section 1 (1), *ante*, and note (g), thereto. As to industrial diseases, see section 55, *post*. These accidents must of course in each case cause the personal injury which gives the claimant the right to benefit. See section 1 (1), *ante*.

(b) **Increase of benefit mentioned in subsection (2).**—These are the increases given in respect of unemployability (section 13), constant attendance (section 15), hospital treatment (section 16), children (section 17), and adult dependants (section 18).

(c) **Benefit.**—This means benefit under this Act (section 88 (1), *post*).

(d) **Injury benefit.**—See section 11, *ante*.

(e) **Disablement pension or pensions.**—See section 12 (7), *ante*, for the basic disablement pension.

(f) **Forty-five shillings.**—This is the maximum basic weekly rate of benefit payable to an adult under the Act. The maximum rate proposed by Part I of the White Paper on Social Insurance (Cmd. 6551), in September, 1944, was 40s. and this was the rate throughout the Bill as presented to Parliament. But on the Second Reading in the House of Commons the Minister announced the increase to 45s. (414 H. of C. Official Report 275), with a consequential increase for persons under 18. The amendment was made in Committee. A person is deemed to be over any age if he has attained that age and he is deemed, according to the law in England as well as according to the law in Scotland, not to have attained the age of eighteen years until the commencement of the eighteenth anniversary of the day of his birth (section 88 (5), *post*). As to ascertainment and proof of age, see section 63, *post*. As to benefit payable to persons not of full age, see sections 11 (3), 12 (7) and 13 (1), *ante*. As to increase of benefit in respect of a child or adult



dependant, see sections 17 and 18, *ante*. As to the definition of "child", see section 88 (1), *post*, and note (c) to section 17, *ante*.

(g) **Between the ages of seventeen and eighteen.**—This new age group, entitled to three-quarter-rate benefit, was introduced on the Report Stage. A person is deemed to be between any two ages if he has attained the first-mentioned age and has not attained the second-mentioned age (section 88 (5) (b), *post*). See also note (f), *supra*.

(h) **Under the age of seventeen.**—The age for half-rate benefit was originally fixed at eighteen. It was lowered on the introduction of the three-quarter-rate age group. See note (g), *supra*. A person is deemed to be under any age if he has not attained that age (section 88 (5) (a), *post*). See also note (f), *supra*.

(i) **Three waiting days for injury benefit.**—This sub-paragraph gives relief in cases where there are two incapacitating accidents within thirteen weeks. If so, for the purpose of counting up the number of days of incapacity so as to cancel out the three waiting days (section 11, *ante*), the days of incapacity due to each accident may be added together and injury benefit calculated accordingly. The injury benefit period is 156 days (excluding Sundays) beginning with the date of the accident (*ibid.*). Thus, if an accident happens on January 1st, causing four days' incapacity for work (not necessarily consecutive), and another accident happens on February 1st, causing ten days' incapacity (not necessarily consecutive), the days of incapacity may be added together. The result is fourteen days, which, by the proviso to section 11 (1), *ante*, means that the three waiting days in respect of each accident are cancelled. The beneficiary therefore draws benefit in respect of the three days immediately following each accident if he was incapacitated on those days.

(k) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they have to be laid before Parliament for 40 days, during which either House may annul them. Before being laid before Parliament they have to be referred in draft to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(l) **Disablement gratuity.**—As to this, see section 12 (6), *ante*. It is payable where the extent of the disablement is assessed at less than 20 per cent. and is instead of a pension under section 12 (7). Once paid, it closes the history of the relevant accident, and this provision is put in to enable such a gratuity and the disablement entitling the beneficiary to it to be taken into account in assessing the disablement resulting from any later accident. The words "may be entitled to" cover a case where a subsequent accident occurs before the disablement arising from a previous accident has been assessed, the earlier assessment being likely to be less than 20 per cent.

(m) **Increases of benefit under subsection (2).**—See note (b), *supra*.

(n) **Increases under sections 13, 15, 17 and 18.**—As to these, see note (b), *supra*. As to injury benefit, see section 11, *ante*, and as to disablement pension, see section 12 (7), *ante*.

(o) **Including increase under section 14.**—Under section 14, *ante*, an increase of disablement pension of 11s. 3d. is allowed in cases of special hardship. This part of the subsection provides that if the beneficiary is between 17 and 18 and not entitled to an increase in respect of a child or adult dependant, or under 17 and not entitled to such an increase, he is entitled to his increase under section 14 in respect of a second or later accident.

**30. Overlapping benefits.**—(1) Provision may be made by regulations (a), in respect of any pension or allowance (excluding an allowance under the Family Allowances Act, 1945 (b), but including benefit payable otherwise than in respect of the relevant accident) (c) payable out of public funds (d), for adjusting—

(a) any increase of benefit under sections thirteen, fifteen, sixteen, seventeen and eighteen of this Act (e), or the conditions for the receipt thereof, where any such pension or allowance is payable to or in respect of—

(i) the claimant or beneficiary (f) or his wife or her husband (g); or

(ii) any child or adult dependant, or the wife or husband of any adult dependant, in respect of whom the increase is claimed or payable (h);

(b) the weekly rate (apart from any such increase of benefit as aforesaid) of injury benefit or a disablement pension (i), where any such pension or allowance is payable to or in respect of the



- claimant or beneficiary or his wife or her husband in virtue of a relationship to, dependence on or other connection with some other person, whether living or dead (*k*) ;
- (c) death benefit (*l*), or the conditions for the receipt thereof, where any such pension or allowance is payable to or in respect of—
- (i) the claimant or beneficiary or his wife or her husband (*m*) ; or
  - (ii) any child in respect of whom, under section twenty-one or twenty-four of this Act, the benefit is claimed or payable (*n*).

(2) Where a person is entitled to benefit under the said section twenty-one in respect of a child of his family (*o*), the allowances payable for that family under the Family Allowances Act, 1945, shall be such only as would be payable if that child were not included in the family (*p*) :

Provided that this subsection shall not apply where that person—

- (a) is (or, if she has remarried (*q*), was) the deceased's widow (*r*) ; or
- (b) is entitled to death benefit in respect of the deceased's death, by way of a pension or by way of an allowance payable to her as having the care of a child, in addition to the benefit under the said section twenty-one (*s*).

#### NOTES

**General effect of section.**—This section, together with section 31, *post*, is designed so as to give the Minister wide powers, in his discretion, to make regulations, when there are a number of different schemes under this and other Acts either passed or to be passed, to prevent duplication or overlapping of benefit to an unreasonable extent. The Family Allowances Act, 1945 ; 32 Statutes Supp. 75 ; is excluded from this section.

A similar section was section 27 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 ; 29 Halsbury's Statutes 1220 ; which provided for cases where sickness or other benefit under other Acts was paid to a person entitled to an old age pension. See now section 30 of the National Insurance Act, 1946.

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for 40 days, during which either House may annul them. Before being laid before Parliament they have to be referred in draft to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(b) **Family Allowances Act, 1945.**—See 32 Statutes Supp. 75. Allowances under this Act, which is excepted from this section, are payable in respect of each child in a family other than the elder or eldest, and for the benefit of the family as a whole, at the rate of 5s. per child per week (section 1 ; 32 Statutes Supp. 75).

(c) **Benefit payable otherwise than in respect of the relevant accident.**—This benefit is not to be taken into account in any adjustment under the section. It apparently means any benefit payable under another Act except the Family Allowances Act, *supra*, so long as it is not payable in respect of the "relevant accident", that is, the accident in respect of which any benefit is claimed or payable under this Act (section 88 (1), *post*). Such benefit is that payable under the National Insurance Act, 1946, section 11 ; for unemployment unconnected with the accident. By section 88 (1), *post*, "benefit" means, unless the context otherwise requires, benefit under this Act. The context seems to require otherwise here. Unemployability supplement and constant attendance supplement payable under section 82, *post*, in respect of old Workmen's Compensation cases appears not to be within this section, being "in respect of the relevant accident".

(d) **Any pension or allowance payable out of public funds.**—This means any pension or allowance payable under any Act, Royal Warrant or Order in Council, whether already passed or to be passed, and will include the benefits proposed in Part I of the White Paper on Social Insurance (Cmd. 6550). It does not, of course, include Workmen's Compensation, for this is not paid out of public funds. The words "pension" and "allowance" are used in different senses in most of these Acts, "pension" meaning the basic life pension and "allowance" meaning a payment supplementary to it or temporary.

(e) **Any increase of benefit under sections 13, 15, 16, 17 and 18 of this Act.**—These sections, *ante*, give increases in respect of unemployability (section 13), constant attendance (section 15), hospital treatment (section 16), children (section 17) and adult dependants (section 18).



(f) **Claimant or beneficiary.**—"Claimant" means a person claiming benefit and includes an applicant for a declaration that an accident was or was not an industrial accident (section 49, *post*), and, in relation to the review of an award or decision (section 50, *post*), a beneficiary under the award or affected by the decision (section 88 (1), *post*). "Beneficiary", in relation to any benefit, means the person entitled to that benefit (*ibid.*).

(g) **Wife or husband.**—For an example of benefit payable to a wife or husband under another Act, see section 24 of the National Insurance Act, 1946, which contains provisions similar to section 18 of this Act, *ante*, relating to adult dependants.

(h) **Child or adult dependant.**—For an example of benefit payable to or in respect of a child under another Act, see section 23 of the National Insurance Act, 1946, which contains provisions as to a benefit increase in respect of children. Cf. section 17, *ante*. As to benefit payable to or in respect of any adult dependant or the wife or husband of any adult dependant, see section 24 of the National Insurance Act, 1946. "Claimed" is defined in section 88 (1), *post*, under "claimant".

(i) **Injury benefit or a disablement pension.**—See sections 11 and 12 (7), *ante*.

(k) **Relationship to or dependence on or connection with some other person.**—This paragraph covers cases such as those of a man living with a woman not his wife. See, for example, the benefit which was payable to such a woman under section 38 (1) (c) (iii) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 522. See now section 24 (2) (c) of the National Insurance Act, 1946.

(l) **Death benefit.**—As to this, see sections 19–24, *ante*.

(m) **Pension or allowance payable to claimant or beneficiary or his wife or her husband.**—It is difficult to find a case of the kind contemplated by these words which is different from those mentioned in note (g), *supra*. Presumably the intention is to deal with such cases as those in so far as they affect death benefit under this Act.

(n) **Child in respect of whom benefit is payable.**—Section 21, *ante*, provides for death benefit in respect of children of the deceased's family. Section 24, *ante*, provides for death benefit in respect of a woman having care of those children. Provisions in respect of these persons are to be found in sections 23 and 24 of the National Insurance Act, 1946. As to "child", see section 88 (1), *post*, and note (c) to section 17, *ante*. The section also covers cases where benefit is payable in respect of parents dependent upon their children, e.g., under section 22, *ante*.

(o) **Child of his family.**—See section 88 (1), *post*, and note (c) to section 17, *ante*.

(p) **Allowances payable under the Family Allowances Act, 1945.**—The allowances are payable under section 1 of that Act; 32 Statutes Supp. 75; and are 5s. per week for each child after the elder or eldest. Any child in respect of whom an increase of death benefit is payable under section 21, *ante*, is to be excluded in counting the family for the purposes of that Act.

(q) **Remarried.**—This includes cohabitation with a man as his wife (section 88 (3), *post*).

(r) **The deceased's widow.**—"The deceased", in relation to death benefit, means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*). Benefit is payable to a widow, subject to remarriage, under section 19, *ante*.

(s) **Death benefit to woman having care of child.**—As to this, see section 24, *ante*. This paragraph was amended on the Report Stage, consequent upon amendments to the death benefit sections (sections 19–24, *ante*). Benefit under section 21, *ante*, is payable to children of the deceased's family.

**31. Adjustment of arrears of benefit in respect of outdoor relief, etc.**—(1) Where outdoor relief (a) is granted to or on account of any person (b) in respect of any period and there subsequently become payable to or in respect of that person any arrears of benefit by way of a pension or allowance (c) for the same period, the Minister (d) may treat the said arrears as reduced for the purposes of this Act by an amount not exceeding the amount of any reduction which the authority granting the relief (e) certify (f) that they would have made in the relief (g) if the benefit had not been paid in arrear.

(2) Regulations (h) may make as respects gratuities (i) provision corresponding to that made by the foregoing subsection as respects benefit by way of a pension or allowance.

(3) Where under this section the Minister treats any benefit as reduced in respect of outdoor relief, he may pay out of the Industrial Injuries Fund



(k) to the authority granting the relief an amount equal to that by which the benefit is treated as reduced.

(4) The foregoing provisions of this section shall apply to an allowance under the Unemployment Assistance Acts, 1934 to 1940 (l), and to a supplementary pension under Part II of the Old Age and Widows' Pensions Act, 1940 (m), as they apply to outdoor relief, with the substitution of references to the Assistance Board (n) for references to the authority granting the relief.

### NOTES

**General effect of section.**—This section provides for an adjustment where a beneficiary is in receipt of outdoor relief which would have been reduced had he been receiving benefit under this Act when it became due, but where benefit is in fact in arrear and the outdoor relief has therefore been at a higher rate. Section 41 of the Workmen's Compensation Act, 1925; Willis 578; contained a similar provision in favour of authorities granting outdoor relief, who were entitled to recover the amount of the relief, or the excess of the relief over the compensation which would have been granted as compensation, from the employer. Section 54 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 529; and section 26 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1220; were in very similar terms. See now section 30 (1) (c) of the National Insurance Act; Statutes Supp. 84. The present section is closely modelled on section 15 of the Family Allowances Act, 1945; 32 Statutes Supp. 30. Section 27, *ante*, also provides for adjustment where benefit is received under other Acts, in that case outdoor relief.

(a) **Outdoor relief.**—This is granted under sections 45–48 of the Poor Law Act, 1930; 12 Halsbury's Statutes 988–991; as amended by section 1 of the Poor Law Act, 1934; 27 Halsbury's Statutes 457; and the National Health Insurance, Contributory Pensions and Workmen's Compensation Act, 1941, Schedule I, Part II (2); 34 Halsbury's Statutes 447; and the rules, orders and regulations made by the Minister of Health thereunder. See the Public Assistance Order, 1930 (S.R. & O. 1930 No. 185); 12 Halsbury's Statutes 1053; the Relief Regulation Order, 1930 (S.R. & O. 1930 No. 186); 12 Halsbury's Statutes 1090; and the Relief Regulation (Amendment) Order, 1932 (S.R. & O. 1932 No. 631); 25 Halsbury's Statutes 461. See also the Poor Law Act, 1934, sections 1 and 2; 27 Halsbury's Statutes 457, 458; and the Transitional Payments (Determination of Need) Act, 1932; 25 Halsbury's Statutes 946. See, generally, 25 Halsbury's Laws (2nd Edn.) 396–398.

(b) **To or on account of any person.**—This presumably includes relief granted to a person in respect of his family. See section 45 (1) of the Poor Law Act, 1930; 12 Halsbury's Statutes 988.

(c) **Benefit by way of a pension or allowance.**—"Benefit" means benefit under this Act (section 88 (1), *post*). Pensions or allowances are payable under sections 11–18, *ante*.

(d) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(e) **The authority granting the relief.**—This is, in general, the local authority. See sections 1 and 2 of the Poor Law Act, 1930; 12 Halsbury's Statutes 968, 969.

(f) **Certify.**—This, of course, means certify in writing. The giving of such certificates is also provided for in the sections of the other Acts mentioned in the General note to this section, *supra*.

(g) **Reduction they would have made in the relief.**—See section 48 of the Poor Law Act, 1930; 12 Halsbury's Statutes 991; as amended by the Poor Law Act, 1934, section 1; 27 Halsbury's Statutes 457; and section 54 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 529. But cf. section 53 and Schedule VIII of the Unemployment Act, 1934; 27 Halsbury's Statutes 801, 821; and the Old Age and Widows' Pensions Act, 1940, section 10 (3) and Schedule II; 33 Halsbury's Statutes 517, 527. See now section 30 (1) (c) of the National Insurance Act, 1946.

(h) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred in draft to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(i) **Gratuities.**—By section 12 (6), *ante*, these are payable where the extent of the disablement is assessed at less than 20 per cent. They are also payable to widows on remarriage (section 19 (2), *ante*), to parents (section 22 (3), *ante*), and to relatives (section 23 (3), *ante*).

(k) **Industrial Injuries Fund.**—See section 2, *ante*. This is the fund out of



which benefit is paid. It is made up of contributions from insured persons, employers and the Treasury and is constituted under section 58, *post*.

(*l*) **Unemployment Assistance Acts, 1934 to 1940.**—These are the Unemployment Assistance Act, 1934; 27 Halsbury's Statutes 786; which is in fact Part II of the Unemployment Act, 1934; *ibid.* 804; the Unemployment Assistance (Emergency Powers) Act, 1939; 32 Halsbury's Statutes 1113; and the Unemployment Insurance Act, 1940; 33 Halsbury's Statutes 529. As to the scope of the Acts and the benefits payable under them, see 34 Halsbury's Laws (2nd Edn.) 597 *et seq.* As to "allowance", see note (*m*) to section 23, *ante*.

(*m*) **Old Age and Widows' Pensions Act, 1940, Part II.**—See 33 Halsbury's Statutes 517 *et seq.* This Part supplements old age pensions and widows' pensions.

(*n*) **Assistance Board.**—This was formerly the Unemployment Assistance Board, constituted under section 35 of the Unemployment Act, 1934; 27 Halsbury's Statutes 786. Its name was changed and its functions enlarged by section 10 of the Old Age and Widows' Pensions Act, 1934; 33 Halsbury's Statutes 517.

**32. Disqualifications, forfeitures and suspensions.**—(1) Except where the regulations otherwise provide (*a*), a person shall be disqualified for receiving any benefit (*b*), and an increase of benefit shall not be payable in respect of any person as the beneficiary's wife or husband (*c*), for any period during which that person—

- (*a*) is absent from Great Britain (*d*); or
- (*b*) is undergoing penal servitude, imprisonment or detention in legal custody (*e*);

and regulations may provide for the suspension of payment to or in respect of any person (*f*) during any such period as aforesaid of benefit which is excepted from the operation of the foregoing provisions of this subsection or which is payable otherwise than in respect of that period (*g*).

(2) Regulations (*h*) may provide for the forfeiture of injury benefit by a claimant or beneficiary (*i*) for failure without reasonable cause (*k*) to comply with the requirements of subsection (4) of section twenty-five of this Act in respect of the relevant injury (*l*), and may further provide for the forfeiture of benefit by a claimant or beneficiary (*m*)—

- (*a*) for failure without reasonable cause to comply with any requirement of regulations made by virtue of any other provision of that section (*n*) (including, in the case of a claim for death benefit, a failure on the part of some other person to give the prescribed notice of the relevant accident) (*o*);
- (*b*) for wilful obstruction of, or other misconduct (*p*) in connection with, any examination or treatment to which he is required under regulations so made to submit himself, or any course which he is so required to attend (*q*), or any proceedings under this Act (*r*) for the determination of his right to benefit or to the receipt thereof;

or for suspending proceedings on the claim or payment of benefit, as the case may be, in the case of any such failure, obstruction or misconduct:

Provided that regulations under this subsection providing for the forfeiture of benefit for any of the following matters, that is to say—

- (i) for failure to comply with the requirements of subsection (4) of the said section twenty-five (*s*);
- (ii) for failure to comply with the requirements of regulations under that section relating to medical examination or treatment (*t*);
- (iii) for obstruction of or misconduct in connection with medical examination or treatment (*u*);

shall not be made so as to disentitle a claimant or beneficiary to benefit for a period exceeding six weeks on any forfeiture (*v*).

(3) Where it appears to the Minister (*w*) that a question has arisen whether—

- (*a*) the conditions for receipt of benefit under an award are or were fulfilled (*x*); or



(b) an award of benefit ought to be revised in accordance with Part III of this Act (y) ;

he may direct that payment of the benefit shall be suspended in whole or in part until that question has been determined (z).

# NOTES

**General effect of section.**—This section provides for disqualification for, and forfeiture or suspension of benefit in various circumstances. Subsection (1) is intended to ensure that while a claimant or beneficiary is abroad or in prison or custody he shall not be credited with benefit which would be lost or go to the institution rather than to him. The intention is to suspend benefit until he is personally free again and able to use it. If he goes to a Dominion or elsewhere the intention of the Minister, as expressed in Committee, is to pay benefit (usually it will be a pension under section 12, *ante*) wherever the beneficiary goes. There is power under section 85, *post*, to make reciprocal arrangements with the Dominions or foreign countries as to the payment of compensation (in pre-Act cases) or benefit, but it is thought that such arrangements will be difficult to make in relation to this part of the general Social Insurance Scheme and that it is better to pay benefit from this country. The provision for disqualification is being retained because there may be a few countries in which it would be difficult to make payments to a beneficiary. The general intention is to suspend rather than disqualify and the regulations will presumably give effect to this.

Subsection (2) is the one which provides the penalties for failure to comply with section 25 (4), *ante*, which requires a beneficiary not to behave in such a way as to retard his recovery. Section 18 of the Workmen's Compensation Act, 1925 ; Willis 463 ; provided for suspension of compensation payable to a workman who refused or obstructed medical examination. Section 1 (1) (b) ; Willis 6 ; provided in certain cases for forfeiture of compensation in cases of "serious and wilful misconduct", but the words are there used in a different context, relating to the injury rather than to medical examination or treatment.

Subsection (3) provides for suspension of benefit while questions of entitlement are being decided.

Similar provisions to subsection (1) (a) appear in other Acts. Section 16 of the Workmen's Compensation Act, 1925 ; Willis 461 ; caused compensation to cease to be payable if a workman ceased to reside in the United Kingdom, the Channel Islands or the Isle of Man. This was held to contemplate some permanent absence, such as that of an emigrant, and not the case of a man who had enlisted in a battalion which had been sent abroad (*Harrison, Ltd. v. Dowling*, [1915] 3 K.B. 218 ; 8 B.W.C.C. 544 ; 34 Digest 366, 2969). Later Acts have included the words "temporarily or permanently", for example, section 66 of the National Health Insurance Act, 1936 ; 29 Halsbury's Statutes 1104 ; and the present Act. Section 21 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 ; 29 Halsbury's Statutes 1216 ; did not expressly mention temporary absence but appeared to contemplate it.

Similar provisions to subsection (1) (b) also appeared in other Acts, for example section 29 of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 517 ; and section 55 of the National Health Insurance Act, 1936 ; 29 Halsbury's Statutes 1097 ; (which did not include prisons).

Now section 29 of the National Insurance Act, 1946, is in similar terms to subsection (1) of this section which was re-drafted in Committee in the House of Lords in order to conform with it. The proviso to subsection (2) of this section was also added in Committee in the House of Lords in order to limit the period of disqualification for non-compliance with section 25, *ante*, to six weeks. Previously no limit was fixed. This carried out an undertaking given by the Government on the Report Stage in the House of Commons.

(a) **Except where regulations otherwise provide.**—As to "regulations", see note (n), *infra*.

(b) **Disqualified from receiving any benefit.**—Note the difference between disqualification for benefit and suspension of payment ; in the latter case the accumulated benefit is paid at the end of the period. Disqualification attaches to the person. "Benefit" by section 88 (1), *post*, means benefit under this Act.

(c) **Increase in respect of wife or husband.**—As to this, see section 18, *ante*. The "beneficiary" means, in relation to any benefit, the person entitled to that benefit (section 88 (1), *post*).

(d) **Absent from Great Britain.**—No length of period is prescribed. Note that "that person" refers both to the person disqualified and to the person who would have been entitled to benefit as the beneficiary's wife or husband. The scheme of this Act, as of the National Insurance Act, is only to pay benefit to persons in "Great Britain", as to which, see note (r) to section 7, *ante*. See, further, General note to section 18, *ante*. Both the present section and section 29 of the National Insurance Act, 1946, cover any absence, however short, including a holiday. As to persons in ships or aircraft, see Part VI, *post*. As to persons in Dominions, colonies or foreign countries, see section 85, *post*. The Minister, on the consideration of the Lords' amendments



in the House of Commons (426 H. of C. Official Report 349) gave an assurance that a similar test would be applied to other adult dependants, besides a husband or wife, by regulations under section 18 (1) (c), *ante*. On the amendment to subsection (3) an assurance was given on behalf of the Government that the suspension of payment of benefit would never be indefinite in character (426 H. of C. Official Report 352). It would only last until any questions required to be answered by the claimant or beneficiary were satisfactorily answered or until there was satisfactory proof of his claim. Regulations would cover this.

(e) **Undergoing penal servitude, imprisonment or detention in legal custody.**—As to penal servitude, see the Penal Servitude Acts, 1853, 1857, and 1864; 13 Halsbury's Statutes 307 *et seq.* A convict at large on licence under sections 9 and 10 of the 1853 Act; *ibid.* 308, 309; would presumably not be held to be "undergoing penal servitude" for this purpose though his term of penal servitude is still continuing. See also section 9 of the 1864 Act; *ibid.* 324. Penal servitude is for three years or more (Penal Servitude Act, 1857, section 2; *ibid.* 311; Penal Servitude Act, 1891, section 1; *ibid.* 364). Imprisonment is for periods not exceeding two years (Penal Servitude Act, 1891, section 1 (2); *ibid.*) and, like penal servitude, is imposed by way of sentence after conviction. "Detention in legal custody" is the expression used here and in section 29 of the National Insurance Act, 1946, to describe persons who are in custody but not under sentence of penal servitude or imprisonment. It includes criminal lunatics, ordered to be detained under the Criminal Lunatics Act, 1884; 13 Halsbury's Statutes 355; and persons remanded in custody or in custody after committal for trial under sections 21 or 25 of the Indictable Offences Act, 1848; 4 Halsbury's Statutes 494, 498. The expression "legal custody" is not used in a strict *ejusdem generis* sense with penal servitude and imprisonment. If a person is acquitted on trial, regulations will empower the lost benefit to be made up.

(f) **Suspension of payment.**—This provision gives the Minister power to suspend payment of benefit in certain cases. As to the difference between disqualification of the person and suspension of payment of benefit, see note (b), *supra*.

(g) **Benefit which may be suspended.**—This is benefit not already covered by the disqualifications mentioned above, either because it is excepted by regulations which otherwise provide, or because it is payable in respect of a period not covered by the disqualification.

(h) **Regulations.**—See note (n), *infra*. No regulations have been made under this section of the time of going to press. The words "regulations may provide" were added by amendment in Committee. The forfeiture provision in the case of injury benefit was previously a part of the section itself.

(i) **Forfeiture of injury benefit by a claimant or beneficiary.**—See note (m), *infra*. As to injury benefit, see section 11, *ante*. Note that this subsection does not apply to disablement pension under section 12, *ante*.

(k) **Failure without reasonable cause.**—If the regulations do not define or give examples of "reasonable cause", which is a difficult thing to define except to say that it means "good reason", it will be necessary to define it by reference to the general law. It has been defined, in connection with malicious prosecution, as such as would operate on the mind of a discreet man; *Broad v. Ham* (1839), 5 Bing. (N.C.) 722, *per* Tindal, C. J., at p. 725; 38 Digest 495, 362. The expression "without reasonable cause" is used in section 518 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 361; in connection with failure to give notice of or deliver up wreck in the United Kingdom. As to what was held to be "reasonable cause" under that section, see *The Glynoeron* (1905), 21 T.L.R. 648; 41 Digest 877, 7551; and, under an earlier Act, *The Zeta* (1875), L.R. 4 A. & E. 460; 41 Digest 877, 7549.

(l) **Requirements of section 25 (4) in respect of the relevant injury.**—That subsection (*ante*) requires a person claiming or entitled to injury benefit (as to which, see section 11, *ante*), in respect of any injury not to behave in any manner calculated to retard his recovery. This subsection provides the sanction for the observance of section 25 (4), namely forfeiture, i.e., loss, of the right to injury benefit. The "relevant injury", by section 88 (1), *post*, means, in relation to any benefit, the injury in respect of which that benefit is claimed or payable.

(m) **Forfeiture of benefit by a claimant or beneficiary.**—"Benefit" means benefit under this Act (section 88 (1), *post*). "Claimant" means a person claiming benefit and includes an applicant for a declaration that an accident was or was not an industrial accident (section 49, *post*) and, in relation to the review of an award or decision (sections 37, 40 and 50, *post*), a beneficiary under the award or affected by the decision (section 88 (1), *post*). "Beneficiary", in relation to any benefit, means the person entitled to that benefit (*ibid.*).

(n) **Regulations made by virtue of any other provision of section 25.**—"Regulations", by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for 40 days, during which either House may annul them. Before being laid before Parliament they have to be



referred in draft to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under section 25 at the time of going to press.

(o) **Failure to give notice of accident in case of claim for death benefit.**—As to death benefit, see sections 19–24, *ante*. In this connection “some other person” will presumably be defined by any regulations which are made. They will be made under section 25 (1), *ante*, and will also prescribe what notice of accidents has to be given. “The relevant accident” means, in relation to any benefit, the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*). Note that the penalty for failure to give notice of accident only applies to claims for death benefit.

(p) **Wilful obstruction or other misconduct.**—The word “wilful” was added by amendment in Committee. The words “serious and wilful misconduct” appear in section 1 (1), proviso (b), of the Workmen’s Compensation Act, 1925; Willis 6; but in connection with the injury. An amendment adding the word “wilful” before “misconduct” was not accepted. It is difficult to think of “misconduct” which is not “wilful”, i.e., intentional, knowing it to be misconduct. “Obstruction”, on the other hand, might not be “wilful”, in the sense of “deliberate, not merely a thoughtless act on the spur of the moment” (*Johnson v. Marshall*, [1906] A.C. 409; *per* Lord LOREBURN, L.C., at p. 411; 34 Digest 338, 2738). The word “obstructs” is used in connection with examination by a medical referee in sections 18 and 19 (5) of the Workmen’s Compensation Act, 1925; Willis 463, 464. See the authorities cited on pp. 467 and 481. The word “unreasonably” has been read into those sections by the courts and “wilful” in the present section will probably be similarly construed. The phrase “wilfully obstructs” occurs in section 62 (4) (a), *post*, in connection with inspectors.

Many authorities are set out in Willis 153–158, dealing with “serious and wilful misconduct” producing an accident but they assume that the meaning of the actual word “misconduct” is clear and that it means conduct which breaks whatever rules of conduct are applicable in the circumstances. “Improper conduct” is the definition of “misconduct” given in the Shorter Oxford English Dictionary (2nd. Edn., 1936). It does not of course bear in this section its other meaning of “bad management” or “mismanagement”.

(q) **Regulations as to examination or treatment or attending courses.**—These will be made under section 25 (2), *ante*. No regulations have been made at the time of going to press.

(r) **Proceedings under this Act.**—See Part III, *post*.

(s) **Failure to comply with section 25 (4).**—This subsection, *ante*, requires claimants and beneficiaries not to behave in any manner calculated to retard their recovery.

(t) **Failure to comply with regulations as to medical examination or treatment.**—As to these, see section 25 (2) (a) and (b), *ante*.

(u) **Obstruction or misconduct in connection with medical examination or treatment.**—As to this, see subsection (2) (b) of this section and note (p), *supra*.

(v) **Suspension not exceeding six weeks on any forfeiture.**—This means that if a claimant or beneficiary again misbehaves after a six weeks’ forfeiture he is only liable to a further six weeks’ forfeiture, and so on, six weeks at a time. “Forfeiture” is chosen as a neutral word, covering both disqualification and suspension.

(w) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(x) **Award.**—This is made by an insurance officer (subject to appeal) under section 45 (3), *post*.

(y) **Revised in accordance with Part III.**—Section 50, *post*, provides for the review of decisions of the insurance officer, local appeal tribunal or Commissioner.

(z) **Suspension of benefit until question determined.**—The determination of questions is provided for by section 36, *post*.

**33. Disqualifications, etc., to be disregarded for certain purposes.**—Regulations (a) may provide that a person who would be entitled to any benefit (b) but for the operation of any of the four last foregoing sections of this Act (c) shall be treated as if he were entitled thereto for the purpose of any rights or obligations under this Act (whether of himself or any other person) which depend on his being so entitled, other than the right to payment of that benefit (d).

#### NOTES

**General effect of section.**—This section gives the power to make regulations allowing disqualifying circumstances to be disregarded. Cases must obviously arise under the four previous sections when their strict application could cause hardship, and it is for such cases that these regulations will provide. The regulations will probably need amendment and addition from time to time as anomalies and hardships reveal themselves. It should be noted that the actual right to benefit is not to be within the scope



of these regulations. Section 31 of the National Insurance Act, 1946, contains similar provisions and refers to this section.

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(b) **Benefit.**—This means benefit under this Act (section 88 (1), *post*).

(c) **Operation of any of the four last foregoing sections of this Act.**—These are section 29, *ante* (adjustments for successive accidents); section 30, *ante* (overlapping benefits payable out of public funds under other statutes); section 31, *ante* (adjustment of arrears of benefit in respect of outdoor relief, etc.); section 32, *ante* (disqualifications, forfeitures and suspensions).

(d) **Rights or obligations dependent on the right to benefit.**—Examples of these are the right to vocational training or industrial rehabilitation (section 74, *post*), the right to artificial limbs, etc. (section 75, *post*), the obligations to give notice of accident and submit to medical examination, etc. (section 25, *ante*), and the employers' obligations under section 26, *ante*.

### Supplementary

**34. Definition of medical treatment and provisions relating thereto.**—(1) For the purposes of this Act (a) the expression "medical treatment" means medical, surgical or rehabilitative treatment (including any course of diet or other regimen) (b), and references to a person receiving or submitting himself to medical treatment shall be construed accordingly.

(2) References in this Act (c) to a person receiving approved hospital treatment shall be construed, in relation to any benefit payable to him, as referring to his receiving, as an in-patient in a hospital or similar institution (d), with the approval of the Minister (e) medical treatment for the relevant injury or loss of faculty (f).

(3) Regulations (g) may provide—

(a) for determining in what cases and for what periods a person receiving medical treatment as an in-patient is or is not to be treated for the purposes of this Act (h) as receiving it free of charge;

(b) that where a person receives medical treatment as an in-patient for two or more distinct periods separated by an interval or intervals of less than a specified duration, he shall be treated for the purposes of this Act as receiving it continuously from the beginning of the first period until the end of the last.

### NOTES

**General effect of section.**—This is the first of two supplementary sections to Part II. It defines the expressions "medical treatment" and "approved hospital treatment" and gives power to make regulations covering doubtful or complicated cases.

(a) **For the purposes of this Act.**—This means sections 15 (3), 25 (2) (b) and (3), 32 (2), *ante*, where the expression "medical treatment" or "any treatment" occurs.

(b) **Regimen.**—This is defined in the Shorter Oxford English Dictionary, 2nd. Edn., 1936, as meaning the regulation of such matters as have an influence on the preservation or restoration of health; a particular course of diet, exercise or mode of living, prescribed or adopted for this end.

(c) **References in this Act.**—References to "approved hospital treatment" occur in sections 16 and 18, *ante*, and also, included in "any treatment", in section 32 (2), *ante*.

(d) **Hospital or similar institution.**—This includes a workhouse (section 88 (1), *post*). In the application of the Act of Scotland it includes a poorhouse (section 90 (a), *post*).

(e) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(f) **The relevant injury or loss of faculty.**—These mean respectively, in relation to any benefit, the injury in respect of which that benefit is claimed or payable, and the loss of faculty resulting from the relevant injury (section 88 (1), *post*). As to loss of faculty, see sections 7 (2) and 12 (1), (2) and (3), *ante*.



(g) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(h) **For the purposes of this Act.**—This means section 15 (3), *ante*, which provides that there shall be no increase of benefit in respect of constant attendance when the beneficiary is receiving free of charge medical treatment as an in-patient in a hospital or similar institution.

**35. Provisions as to maintenance and incapacity for self support.**—(1) Regulations (a) may provide for determining the circumstances in which a person is or is not to be deemed for the purposes of this Act to be wholly or mainly, or to a substantial extent, maintaining another person (b).

(2) Regulations under the foregoing subsection as respects the circumstances in which a person is to be deemed to be wholly or mainly maintaining another person may provide, for the purposes of section eighteen of this Act (c), that where—

- (a) a person is partly maintained by each of two or more beneficiaries (d), each of whom would be entitled to an increase of benefit (e) under that section in respect of that person if he were wholly or mainly maintaining that person; and
- (b) the contributions made by those two or more beneficiaries towards the maintenance of that person amount in the aggregate to sums which would, if they had been contributed by one of those beneficiaries, have been sufficient to satisfy the requirements of those regulations (f);

that person shall be deemed to be wholly or mainly maintained by such of those beneficiaries as may be prescribed (g).

(3) Regulations under subsection (1) of this section may further provide, for the purposes of sections twenty-two and twenty-three of this Act (h), that where—

- (a) a person was partly maintained by each of two or more insured persons of whom the first mentioned person was a parent within the meaning of the said section twenty-two, or a relative prescribed for the purposes of the said section twenty-three, as the case may be (i); and
- (b) the insured persons have died as the result of accidents against which they were insured under this Act (k);

the parent or relative shall be treated as having received from such of those insured persons as may be prescribed contributions to his maintenance equal to the aggregate amount which they were together contributing before the accidents happened, and as having received nothing from the others (l).

(4) In the case of death benefit (m), except where the deceased (n) at his death (o) was, or would but for the relevant accident (p) have been, wholly maintaining the beneficiary,—

- (a) the weekly rate of any pension payable to the beneficiary as a parent within the meaning of the said section twenty-two, or as a relative prescribed for the purposes of the said section twenty-three, shall not exceed the weekly rate of the contributions which the deceased at his death was or would but for the relevant accident have been making to the beneficiary's maintenance (q); and
- (b) the amount of any gratuity payable to the beneficiary as such a parent or relative shall not exceed such multiple of the weekly rate of the contributions aforesaid as may be determined by or in accordance with regulations (r);

Provided that in the case of a relative who was at the deceased's death



a child, or is a posthumous son or daughter of the deceased, references in this subsection to the weekly rate of the contributions aforesaid shall be construed as references to the weekly rate of the contributions which the deceased might have been expected to have been making to the relative's maintenance when he ceased to be a child (s).

(5) For the purposes of this Act (t)—

- (a) a person shall be deemed to be incapable of self support if, but only if, he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for a prolonged period (u);
- (b) a person shall be deemed to be permanently incapable of self support if, but only if, he is incapable of supporting himself by reason aforesaid and is likely to remain so incapable for the remainder of his life (v).

### NOTES

**General effect of section.**—This is the second of two supplementary sections to Part II. It provides for the defining, by regulations, the meaning of "wholly or mainly maintaining" and "to a substantial extent maintaining", and deals with cases where several beneficiaries contribute to the maintenance of one person, and cases where a deceased person was maintaining a beneficiary. It also defines "incapable of self-support"; whether permanently or not.

On the Report Stage the section was amended so as to enable regulations to be made, fixing the payment to a parent by way of pension or gratuity in a case where, for example, two sons have been killed in an accident; two sons who contributed to their parents' support. The contributions can be aggregated for the purpose of fixing the pension or gratuity. The provisions governing the weekly rate of pension or the amount of gratuity were also amended to conform with the amendments to other sections, and to enable regulations to be made relating the maximum pension or gratuity payable to a parent or relative to the amount of maintenance which that parent or relative was receiving from the deceased in cases where the degree of maintenance was less than total.

The National Insurance Act, 1946, section 34, contains similar provisions to subsections (1) and (2), though the expression "to a substantial extent" is not there used. "Incapable of self-support" is defined in section 78 (1) as having the same meaning as in this Act, that is, as set out in subsection (5) of the present section. The word "permanently" does not appear in that Act.

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(b) **For the purposes of this Act to be wholly or mainly or to a substantial extent maintaining another person.**—This means sections 17–24, *ante*, in which these expressions occur in connection with the increases of benefit, and with death benefit payable in respect of various persons.

(c) **For the purposes of section 18 of this Act.**—Section 18, *ante*, provides for increased injury benefit and disablement pension in respect of adult dependants.

(d) **Beneficiaries.**—This, in relation to any benefit, means the persons entitled to that benefit (section 88 (1), *post*).

(e) **Benefit.**—This means benefit under this Act (section 88 (1), *post*).

(f) **Contributions of two beneficiaries to be aggregated.**—Note that this condition is additional to that contained in paragraph (a). The sums necessary to qualify will be set out in the regulations. These contributions are of course nothing to do with those payable under Part I, *ante*, to the Fund by all insured persons. Thus, if son and daughter each contribute 10s. a week towards their mother's maintenance and the regulations fix 20s. as the qualifying amount, the regulations will have been satisfied.

(g) **Deemed to be.**—As to this expression, see note (s) to section 7, *ante*. "Prescribed" means prescribed by regulations (section 88 (1), *post*).

(h) **For the purposes of sections 22 and 23.**—These sections, *ante*, respectively provide death benefit for parents and relatives of the deceased.

(i) **Definition of "parent" and "relative".**—As to this, see section 22 (5), *ante* (parent) and section 23 (1) and (5), *ante* (relative).

(k) **Insured persons have died as a result of accidents insured against.**—As to insured persons, see section 1 and the First Schedule, *ante*. As to accidents insured



against, see also section 1. Note that this condition is additional to that contained in paragraph (a).

(l) **Contributions of two or more persons to maintenance of a parent or relative.**—These are by regulations to be treated as having been paid by one person, to be prescribed by the regulations, so that sections 22 and 23, *ante*, can be applied.

(m) **Death benefit.**—See sections 7 and 19–24, *ante*.

(n) **The deceased.**—This, in relation to death benefit, means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*).

(o) **At his death.**—As to the ascertainment and proof of death, see section 63, *post*.

(p) **Relevant accident.**—This means, in relation to any benefit, the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(q) **Rate of pension for parent or relative.**—As to the rate of pension for a parent, see section 22 (4) (a), *ante*, and as to the rate for a relative, see section 23 (4) (a), *ante*.

(r) **Amount of gratuity for parent or relative.**—As to the amount of gratuity for a parent, see section 22 (4) (b), *ante*; and as to the amount for a relative, see section 23 (4) (b), *ante*.

(s) **Relative who was child or posthumous child.**—As to these, see section 23 (6) and (7), *ante*. The contributions which the deceased might have been expected to have been making when he ceased to be a child will have to be estimated in each case by considering the relative's present earning capacity and commitments.

(t) **For the purposes of this Act.**—This means sections 13, 18, 19, 20 and 23, *ante*.

(u) **Incapable of self-support.**—This expression is used in section 18, *ante*, in relation to the increase of benefit in respect of adult dependants. Cf. the expression "incapable of work" used in sections 7 (1), 11 (1) and 13 (1), *ante*. Cf. the expressions "prevented by . . ." or "unable by reason of . . . mental or physical infirmity to support [or "from supporting"] himself" in section 38 (1) (b) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 522. Cf. also the definition of the expression "incapable of self-support" as used in the Royal Warrant of April, 1946 (Cmd. 6799). The expression is used in the National Insurance Act, 1946, and is defined in section 78 (1) by reference to this Act. It must mean incapable of self-support in any occupation, not merely the one in which he has been trained or previously employed. As to the meaning of "deemed", see note (s) to section 7, *ante*. The assessment of whether a person is incapable of self-support will be presumably a question for a medical board (see sections 38–41, *post*), on reference by an insurance officer, unless he can determine the question himself. "Infirmity" is primarily defined in the Shorter Oxford English Dictionary, 2nd Edn., 1936, as "weakness or want of strength" and also as "physical weakness, debility, frailty, feebleness of body, resulting from some defect, disease or (now mostly) old age". It also means a special form or variety of weakness. Mental infirmity is more often used to mean weakness of character.

(v) **Permanently incapable of self-support.**—This expression is used in section 19, *ante*, in relation to widows, in section 20, *ante*, in relation to widowers, and in section 23, *ante*, in relation to relatives, entitled to death benefit. See also note (u), *supra*. This expression is not used in the National Insurance Act, 1946.

### PART III

#### DETERMINATION OF QUESTIONS AND CLAIMS

##### *Persons to determine questions and claims*

**36. Persons to determine questions and claims.**—(1) Subject to the provisions of this Part of this Act (a), any of the following questions arising under this Act shall be determined as provided by this subsection, that is to say—

(a) any question—

(i) whether a person is or was employed in insurable employment (b);

(ii) whether a person so employed or his employer is or was exempt from payment of contributions as provided in Part II of the Second Schedule to this Act (c);

(iii) who is or was liable for payment of contributions as the employer of any insured person (d);

(iv) at what rate contributions are or were payable by or in respect of any person or class of persons (e);

(v) whether an increase of disablement pension in respect



of the need of constant attendance is to be granted or renewed and, if so, for what period and of what amount (f) ;

(vi) how the limitations under the Fourth Schedule to this Act on the benefit payable in respect of any death are to be applied in the circumstances of any case (g) ;

shall be determined by the Minister (h) ;

(b) any question—

(i) whether any person is or was a child (i) or is or was under the upper limit of the compulsory school age (k) ;

(ii) whether any person has or had a family including a child or children, or is or was a child of some other person's family (but not whether any person is to be treated for the purpose of any provision of this Act as having a family as aforesaid, or as being a child of some other person's family) (l) ; shall be determined in like manner, subject to any prescribed (m) modifications and adaptations, as a corresponding question arising in respect of an allowance under the Family Allowances Act, 1945 (n) ;

(c) any question—

(i) whether the relevant accident (o) has resulted in a loss of faculty (p) ;

(ii) whether a loss of faculty is likely to be permanent (q) ;

(iii) at what degree the extent of disablement resulting from a loss of faculty is to be assessed, and what period is to be taken into account by the assessment (r) ;

shall be determined by a medical board or medical appeal tribunal constituted in accordance with the following provisions of this Act (s).

(2) Subject to the foregoing provisions of this section, any claim for benefit and any question arising in connection with a claim for or award of benefit shall be determined by an insurance officer, a local appeal tribunal or the Commissioner appointed or constituted in accordance with the following provisions of this Act (t).

(8) Except as provided by this Part of this Act or by the Family Allowances Act, 1945, as applied by paragraph (b) of subsection (1) of this section (u), any decision of a claim or question as provided by the foregoing provisions of this section shall be final (v).

(4) Any decision of any such question as is mentioned in paragraph (b) of subsection (1) of this section, if given for the purposes of the Family Allowances Act, 1945, shall have effect also for the purposes of this Act or, if given for the purposes of this Act, shall have effect also for the purposes of that Act (w).

(5) Any such question as is mentioned in subsection (1) of this section is hereafter in this Act referred to as a "special question," and the questions mentioned in paragraph (c) of that subsection are hereafter so referred to as the "disablement questions" (x).

#### NOTES

**General effect of section.**—This section is the first of those dealing with the determination of questions and claims and provides that certain questions, called "special questions", shall be determined by the Minister. They are withdrawn from the usual channel of appeal by subsection (1) (a). One of the "special questions" was that of the granting an unemployability supplement under section 13, *ante*, but this was deleted in Committee. It was thought to be a question more suitable for the usual channel of appeal under subsection (2).

Certain of the "special questions" are reserved for decision in a manner similar to that provided by the Family Allowances Act, 1945 ; 32 Statutes Supp. 75.

Other "special questions", known as "disablement questions", are reserved to the medical board or medical appeal tribunal.

The normal procedure for the determination of all questions not reserved for decision in a special way is provided by subsection (2) and is the decision of the insurance officer, with an appeal to the local appeal tribunal and to the Commissioner. This



procedure will be the appropriate one for the question whether the relevant accident arose "out of and in the course of" the insurable employment (sections 1 and 7, *ante*), subject to section 49, *post*.

The procedure for settling Workmen's Compensation questions was laid down by section 21 of the Workmen's Compensation Act, 1925; Willis 486. There were two methods of settling questions—agreement or arbitration.

The procedure under the present Act is similar to that provided by other social legislation statutes. The Unemployment Insurance Act, 1935, sections 4, 12, 45, 84, and 85; 28 Halsbury's Statutes 505, 509, 527, 551 and 552; provided for the determination by the Minister of Labour of questions as to insurability and contributions and by the court of referees of questions incidental to claims for benefit. In the National Health Insurance Act, 1936, the determination of questions and disputes was more compactly dealt with in sections 161–164; 29 Halsbury's Statutes 1166–1169; and that procedure was brought into the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 by section 17 (6) of that Act; 29 Halsbury's Statutes 1214. For examples of cases decided under section 161 of the National Health Insurance Act, 1936, see *In re Roberts*, [1939] W.N. 381; *Appeal of Thompson, Re A. Johnson (Hove), Ltd.*, [1939] 4 All E.R. 277; and *Appeal of Sherwood, Re G. F. A. Brown & Sons, Ltd.*, [1939] 4 All E.R. 291.

In the National Insurance Act, 1946, the determination of claims and questions is provided for by section 43, and is largely left to regulations, though the form of that section is similar to the form of this one.

(a) **Subject to the provisions of this Part of this Act.**—For example, the later subsections of this section as to questions other than special questions; section 37, *post*, as to appeals on questions of law; sections 38–41, *post*, as to medical questions; sections 45–50, *post*, as to decisions of insurance officers and appeals therefrom and references of special questions.

(b) **Employed in insurable employment.**—As to this, see section 1, *ante*, and the First Schedule, *post*.

(c) **Exemption from contributions.**—For Part II of the Second Schedule, see *post*. The exempted employments will be prescribed by regulations under section 77, *post*. As to "employer", see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*.

(d) **Liability to pay contributions as employer.**—As to this, see section 4, *ante*, and section 80, *post*.

(e) **Rate of contributions.**—As to this, see section 2, *ante*, and Part I of the Second Schedule, *post*.

(f) **Increase of disablement pension in respect of constant attendance.**—As to this, see section 15, *ante*. As to disablement pension generally, see section 12 (7), *ante*.

(g) **Application of the Fourth Schedule to death benefit cases.**—This Schedule, *post*, limits death benefit in cases where more than one person is entitled and provides for adjustment as between persons entitled to pensions and gratuities. It also limits the amounts of parents' and relatives' gratuities under sections 22 and 23, *ante*.

As amended on the Report Stage, this sub-paragraph puts upon the Minister, and not the insurance officer, local appeal tribunal or Commissioner the responsibility of deciding between competing claims for death benefit in the light of this Schedule.

(h) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*). This provision reserves to the Minister questions which would otherwise be determined by one of the tribunals under this Part of the Act, with the appropriate right of appeal. As to the finality of decisions, see subsection (3) and note (v), *infra*.

(i) **Child.**—As to the meaning of the word as used in this Act, see section 88 (2), *post*, and note (c) to section 17, *ante*, where the whole subject is fully discussed.

(k) **Upper limit of the compulsory school age.**—As to this, see *ibid*.

(l) **Family including a child or children.**—As to this, see *ibid*. For examples of provisions that a person is to be treated as having such a family, or as being a child of such a family, see sections 17 (2), 18 (1) and 21 (2), *ante*.

(m) **Prescribed.**—This means prescribed by regulations (section 88 (1), *post*).

(n) **Family Allowances Act, 1945.**—The procedure under that Act is laid down by section 5; 32 Statutes Supp. 77; which provides that such questions shall be determined by the Minister of National Insurance, with a right of reference to a referee or referees selected from a panel.

(o) **Relevant accident.**—This means, in relation to any benefit, the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(p) **Loss of faculty.**—As to this, see sections 7 and 12, *ante*.

(q) **Whether loss of faculty permanent.**—This is for the purposes of section 12 (1), *ante*.

(r) **Degree of disablement.**—As to this, see section 12, *ante*.



(s) **Medical board and medical appeal tribunal.**—As to these, see sections 38–41, *post*.

(t) **Insurance officer, etc.**—As to these, see sections 42–50, *post*. “Claim” includes (section 88 (1), *post*) (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *post*), and (b) an application for the review of an award or decision (sections 37, 40 and 50, *post*). “Benefit” means benefit under this Act (section 88 (1), *post*).

(u) **Family Allowances Act.**—The relevant section is section 5 ; 32 Statutes Supp. 77. See note (n), *supra*.

(v) **Decisions to be final.**—This presumably means subject to the cases where there is a right of appeal under section 46, *post*, and subject to the right of appeal on questions of law under section 37, *post*.

(w) **Purposes of the Family Allowances Act, 1945.**—The purposes of that Act are to provide for the payment of family allowances for every family which includes two or more children, for the benefit of the family as a whole.

(x) **Hereafter in this Act.**—That is, in Part III.

### *Determination of questions by Minister*

**37. Appeal from, and review of, Minister's decisions.**—(1) Any question of law (a) arising in connection with the determination of any such question as is mentioned in sub-paragraphs (i) to (iv) of paragraph (a) of subsection (1) of the last foregoing section (b) may, if the Minister (c) thinks fit, be referred for decision to the High Court (d), and any person aggrieved (e) by the decision of the Minister on any such question of law which is not so referred may appeal from that decision to the High Court.

(2) Provision shall be made by rules of court for regulating references and appeals to the High Court under this section, and those rules shall provide for limiting the time within which appeals may be brought (f).

(3) The Minister shall be entitled to appear and be heard on any such reference or appeal (g).

(4) So much of subsection (1) of section sixty-three of the Supreme Court of Judicature (Consolidation) Act, 1925, as requires an appeal from any person to the High Court to be heard and determined by a divisional court shall not apply to appeals under this section (h).

(5) Notwithstanding anything in any Act, the decision of the High Court on a reference or appeal under this section shall be final and on any such reference or appeal the court may order the Minister to pay the costs of any other person, whether or not the decision is in his favour and whether or not the Minister appears on the reference or appeal (i).

(6) The Minister may, on new facts being brought to his notice, review a decision given by him of any such question as is mentioned in paragraph (a) of subsection (1) of the last foregoing section (k) :

Provided that a decision of any such question as is mentioned in sub-paragraphs (i) to (iv) of that paragraph (l) shall not be reviewed while an appeal is pending against the decision of the Minister on a question of law arising in connection therewith (m) or before the time for bringing such an appeal has expired, and subsection (1) of this section shall apply in relation to the determination or decision on a review of any such question as is mentioned in the said sub-paragraphs as it applies to the original determination or decision of such a question.

### NOTES

**General effect of section.**—This section provides a right of appeal or reference to the High Court on questions of law and also a power of review by the Minister of his decisions on those “special questions” which are within section 36 (1) (a), *ante*. The Minister may refer questions of law himself, if he thinks fit. If he does not do so, “any person aggrieved” (as to which, see *infra*), may appeal. In Scotland the appropriate court is the Court of Session (section 90 (a), *post*).

The procedure is not new. The Workmen's Compensation Act, 1925, Schedule I, 4 ; Willis 678 ; gave a committee or arbitrator power to submit any question of law for the decision of county court judge, whose decision was final, subject only to appeal to the Court of Appeal.

Section 84 of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes



551; gave, in matters coming under that Act, a right of appeal and powers of reference, though not limited to points of law, and a power of review very similar to those given by the present section. Section 161 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1166; contained similar provisions, though limited to questions of law in the case of appeals, with respect to matters coming under that Act. See also section 162; *ibid.* 1167. Both those sections provided for the selection of a High Court judge to deal with these appeals and references, but the present section leaves the matter to be dealt with by rules of court.

There is also a power of review given to insurance officers, and local appeal tribunals on reference, by section 50, *post*.

As to the general law under these other Acts, see 34 Halsbury's Laws (2nd Edn.) 560 *et seq.*, 711 *et seq.* and 759 *et seq.*

Section 43 (4) of the National Insurance Act, 1946, now replaces the earlier sections and empowers references and appeals to the High Court, though that section is mainly an enabling section, empowering regulations to be made.

The provision as to costs in subsection (5) was inserted on the Report Stage in the House of Lords. The amendment had been moved in Committee but withdrawn on the Lord Chancellor's undertaking that, as in other cases where the Crown was engaged in a test case, the Crown would, in a proper case, pay the costs in any event, and on his pointing out that the Judge always had a complete discretion as to costs and had seldom, if ever, exercised it in the Crown's favour in such cases. A similar amendment was moved on the Report Stage but was withdrawn and the Lord Chancellor's amendment substituted in its present form.

(a) **Any question of law.**—Most questions which arise under an Act of this kind are questions of fact—whether in a particular case the facts do or do not bring it within a particular provision. But occasional questions of law arise, such as whether a wrong principle has been applied in reaching a decision on particular facts, or what is the combined effect of two apparently conflicting provisions of the Act. Very careful consideration is needed, however, in every case, for questions of fact often masquerade with some success as questions of law.

(b) **Any such question as is mentioned in section 36 (1) (a) (i) to (iv).**—These are some of the "special questions", and relate to insurability and contributions. See notes to section 36, *ante*.

(c) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(d) **The High Court.**—This means the High Court of Justice. In Scotland the appropriate court is the Court of Session (section 90 (a), *post*). As to the hearing of references and appeals, see subsections (2) and (4), *post*.

(e) **Any person aggrieved.**—This expression is used in other Acts giving a right of appeal. For example, by Schedule I, Part II, paragraph 2 of the Town and Country Planning Act, 1932; 25 Halsbury's Statutes 527; "any person aggrieved" by a scheme is entitled to apply to the High Court under R.S.C., Ord. 55B, Rules 71–75; Annual Practice, 1945, 1252–1253. The expression also appears in proviso (i) to section 161 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1166. It has been held that a "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something (*Re Sidebotham, Ex parte Sidebotham* (1880), 14 Ch. D. 458, C.A., at p. 465; 4 Digest 225, 2114). But a person may still be "aggrieved" though his only grievance is pecuniary (*Sevenoaks Urban District Council v. Twynam*, [1929] 2 K.B. 440, at p. 443 Digest Supp.; a case of a ratepayer objecting to the provision of car parks under section 68 (2) of the Public Health Act, 1925; 13 Halsbury's Statutes 1145).

(f) **Rules of court.**—These will probably be embodied into R.S.C., Ord. 55B; Annual Practice, 1945, 1239; which contains the rules of procedure on references and appeals under repealed Acts. In the case of this Act (and the National Insurance Act) the rules will presumably provide for the selection of a judge to whom these references and appeals will be allotted. Other Acts have provided for this, but in this Act it has been omitted. Singleton, J., was the last judge selected for matters under the Unemployment Insurance and National Health Insurance Acts.

(g) **Minister's right of audience.**—He will have to appear by solicitor and counsel in the ordinary way.

(h) **Supreme Court of Judicature (Consolidation) Act, 1925, section 63 (1).**—For this section, see 13 Halsbury's Statutes 224. Since appeals under the present Act are not to be heard and determined by a divisional court they will presumably be allotted to a selected judge. See note (f), *supra*. References are not allotted to the divisional court by that section, *supra*, and therefore do not need to be mentioned in this subsection. In the National Insurance Act, 1946, the corresponding provision to this one is to be omitted in the Act as it applies to Scotland (sections 43 (4) (b) and 79 (f)). No such provision appears in this Act, presumably *per incuriam*.

(i) **High Court's decision to be final.**—This means there shall be no appeal. It does not mean that the decision is a "final judgment or order", as distinct from



an "interlocutory judgment" for the purposes of R.S.C., Ord. 58, which governs appeals to the Court of Appeal. See Annual Practice, 1945, 1283, and especially Rule 3, *ibid.* 1298. As to the provision dealing with costs, see General note, *supra*. The effect of it is merely to remove any doubts which there might be about the Court's discretion as to costs, which is, in any event, absolute so long as it is exercised judicially. As to the judicial discretion, see *Campbell (Donald) & Co., Ltd. v. Pollak*, [1937] A.C. 732; 43 Digest 335, 1570. The Judge has the same powers irrespective of whether the case is a "test case" or not. A "test case" is merely one whose facts are so similar to those in other cases that it is safe to assume that the other cases would be decided in the same way.

(h) **Review by Minister.**—The questions which may be reviewed are those set out in section 36 (1) (a) and (b), *supra*, that is the "special questions".

"New facts" in this context is not confined, as in the rule as to adducing fresh evidence in the appellate courts of common law, to facts which could not with reasonable diligence have been discovered before (see R.S.C., Ord. 58, Rule 4 and notes thereto; Annual Practice, 1945, 1299), and there seems to be no reason why it should be so confined. The materiality or importance of the new facts is a matter entirely for the Minister and is left to his discretion. His refusal to review a decision might amount to "a question of law" under subsection (1), *supra*, if it was based on wrong principles. The person by whom the new facts are brought to his notice is left open, nor is there any limitation put upon the evidence by which they are to be proved.

For the power of review given to insurance officers, and local appeal tribunals on reference, see section 50, *post*. For review of medical decisions, see section 40, *post*.

Similar provisions to this subsection appear in section 5 (3) and (4) of the Family Allowances Act, 1945; 32 Statutes Supp. 77.

(l) **Questions mentioned in section 36 (1) (a) (i) to (iv).**—See note (b), *supra*.

(m) **Appeal on question of law.**—See notes to subsection (1), *supra*. This proviso means that there may be a review by the Minister unless an appeal is pending against the decision, and that when there has been a review the decision as reviewed is subject to appeal under subsection (1) like an original decision. An appeal is "pending" once the proper notice has been served on the proper persons within the prescribed time.

### *Determination of questions by medical boards and medical appeal tribunals*

**38. Constitution of medical boards and medical appeal tribunals.**—(1) Medical boards for the purposes of this Act (a) shall be appointed by the Minister (b) and shall consist of two or more medical practitioners (c) of whom one shall be appointed as chairman:

Provided that the Minister may arrange with any other Government department that any medical board consisting of two or more medical practitioners appointed or recognised by that department shall be a medical board for the purposes of this Act (d).

(2) Medical appeal tribunals for the purposes of this Act (e) shall be appointed by the Minister and shall consist of a chairman and two medical practitioners (f).

(3) Subject as aforesaid the constitution of medical boards and medical appeal tribunals shall be determined by regulations (g).

### NOTES

**General effect of section.**—This is the first of the sections dealing with the determination of medical questions. It provides for the appointment and constitution of medical boards and medical appeal tribunals.

Under the Workmen's Compensation Act, 1925, sections 17–20; Willis 462–464; there was a procedure laid down for medical examination and for reference to a medical referee for his certificate as to the workman's condition and fitness for employment. The hearing before the medical referee has recently been held not to be such as to confer judicial privilege on observations made in the course of it (*Smith v. National Meter Co., Ltd.*, [1945] 2 All E.R. 35, at p. 42).

It was contemplated when the White Paper on Social Insurance, Part II (Cmd. 6551) was published in September, 1944, that the Medical Boards of the Ministry of Pensions might be used for the medical assessment of pension, when the insured person's condition was considered to warrant assessment by a medical board (*ibid.*, paragraph 36 (iv)).

Medical practitioners may also sit as additional members of, or assessors with, local appeal tribunals (section 43 (2), *post*).

(a) **Medical boards for the purposes of this Act.**—That is, for the purposes



of sections 39-41, *post*, and section 36 (c), *ante*. Cf. the special medical boards and medical officers established under section 56, *post*.

(b) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(c) **Medical practitioners.**—This means registered medical practitioners (section 88 (1), *post*), that is, any persons for the time being registered under the Medical Acts (Medical Act, 1886, section 27; 11 Halsbury's Statutes 725). See also section 226 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1183. Cf. "qualified practitioner" used and defined in sections 14-16 of the National Insurance Act, 1946, in relation to maternity benefit. "Duly qualified medical practitioner" and "medical practitioner" occurred in sections 12 and 17-19 of the Workmen's Compensation Act, 1925; Willis 462-4. As to payment of doctors, see section 53, *post*.

(d) **Arrangement with any other Government department.**—The department concerned will probably be the Ministry of Pensions, see General note, *supra*, since it is the department concerned with the assessment of service pensions under the Royal Warrant (Cmd. 6799) which are assessed on a percentage basis, the method embodied in this Act.

(e) **Medical appeal tribunals for the purposes of this Act.**—That is, for the purposes of sections 39-41, *post*, and section 36 (1) (c), *ante*.

(f) **Chairman and two medical practitioners.**—Note that the subsection does not provide that the chairman is to be a medical practitioner. Cf. subsection (1), *supra*. As to their payment, see section 53, *post*.

(g) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. If any other Government department is concerned under subsection (1), *supra*, the regulations will no doubt receive its approval at the proper stage. No regulations have been made under this section at the time of going to press.

**39. References to medical boards and appeals and references to medical appeal tribunals.**—(1) The case of any claimant for disablement benefit (a) shall be referred by the insurance officer to a medical board for determination of the disablement questions (b) in accordance with the following provisions of this Part of this Act relating to the determination of claims (c), and if, on that or any subsequent reference, the extent of the disablement is provisionally assessed, shall again be so referred not later than the end of the period taken into account by the provisional assessment (d).

(2) If the claimant is dissatisfied with (e) the decision of a medical board, he may appeal in the prescribed manner and within the prescribed time (f) and the case shall be referred to the medical appeal tribunal (g):

Provided that an appeal shall not lie against a provisional assessment of the extent of disablement before the expiration of two years from the date of the first reference of the case to a medical board under the foregoing subsection, nor where the period taken into account by the assessment falls wholly within the said two years (h).

(3) If the Minister (i) notifies the insurance officer within the prescribed time (k) that he is of opinion that any decision of a medical board ought to be considered by a medical appeal tribunal, the insurance officer shall refer the case to a medical appeal tribunal for their consideration, and the tribunal may confirm, reverse or vary the decision in whole or in part as on an appeal (l).

#### NOTES

**General effect of section.**—This section provides the means whereby cases come before medical boards, namely on reference by an insurance officer, and before medical appeal tribunals, namely on appeal from a medical board or on a reference by an insurance officer ordered by the Minister.

(a) **Claimant for disablement benefit.**—"Claimant" means a person claiming benefit, i.e. benefit under this Act, and includes (a) an applicant for a declaration that an accident was or was not an industrial accident; and (b) in relation to the review of an award or decision, a beneficiary under the award or affected by the decision (section 88 (1), *post*). Disablement benefit is payable if the injury results in loss of physical or mental faculty (sections 7 (1) (b) and 12, *ante*).



(b) Shall be referred by the insurance officer to a medical board for determination of the disablement questions.—This provision is mandatory and not permissive. The insurance officer (as to whom, see section 44, *post*), must refer to the medical board (constituted under section 38, *ante*), the "disablement questions" which are set out in section 36 (1) (c), *ante*. These are questions as to whether the accident has resulted in a loss of faculty, as to the permanence of the loss and as to the degree of disablement it has caused and for what period it should be assessed. The insurance officer has no discretion in the matter.

(c) Provisions relating to the determination of claims.—These are contained in sections 42–50, *post*. The disablement questions are to be decided by the medical board in a similar way to that in which the other questions are to be decided under these sections.

(d) Provisional assessment.—This is made under the proviso to section 12 (4), *ante*, in cases where the condition of the claimant is not such, having regard to the possibility of changes therein (whether predictable or not), as to allow of a final assessment. The extent of disablement is assessed on a percentage basis (section 12 (5), *ante*).

(e) Dissatisfied with.—This expression, which also appears in section 46, *post*, means no more nor less than what it says. It is wider than "aggrieved by", which appears in various Acts; for example, in section 161 (1) proviso (i) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1166; and is discussed in note (e) to section 37, *ante*. "Dissatisfied with" does not imply any infringement of a legal right nor that the person has in fact good grounds for dissatisfaction. "Decision" includes the determination of any of the disablement questions, an assessment or provisional assessment, but not an adjournment of the hearing of the case.

(f) Prescribed manner and time.—This means prescribed by regulations (section 88 (1), *post*). These particular regulations, which have not been made at the time of going to press, will be made under section 51 (1) (a), *post*.

(g) Medical appeal tribunal.—This will be constituted under section 38 (2), *ante*.

(h) No appeal against provisional assessment for two years.—The purpose of this provision was explained in Committee. Two years, rather than one year, was fixed as the period because it was thought that a shorter period would create in the minds of insured persons the apprehension of another medical board in a year's time, which would keep them in a state of continuous uncertainty. This policy was debated and later carried out with regard to war pensions appeal tribunals and it has been decided, on balance, to adopt it in the present Act.

(i) The Minister.—This means the Minister of National Insurance (section 88 (1), *post*).

(k) Prescribed time.—This means prescribed by regulations (section 88 (1), *post*). See note (f), *supra*. The regulations will presumably prescribe the form of notification to be used by the Minister.

(l) Reference to medical appeal tribunal.—This subsection gives the Minister a discretionary power of reference, in addition to the right of a claimant to appeal under subsection (2), *supra*. The procedure before the tribunal is the same in either case and the decision will have the same effect in either case.

**40. Review of decisions of medical boards and medical appeal tribunals.**—(1) Any decision under this Act of a medical board or a medical appeal tribunal (a) may be reviewed at any time by a medical board if satisfied by fresh evidence (b) that the decision was given in consequence of the non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) (c).

(2) Any assessment of the extent of the disablement resulting from the relevant loss of faculty (d) may also be reviewed by a medical board, if satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury (e):

Provided that an assessment shall not be revised under this subsection unless the medical board are of opinion that, having regard to the period taken into account by the assessment (f) and the probable duration of the aggravation aforesaid, substantial injustice (g) will be done by not revising it.

(3) Except with the leave of a medical appeal tribunal, an assessment shall not be reviewed under the last foregoing subsection on any application made less than five years, or, in the case of a provisional assessment, six months, from the date thereof (h), and (notwithstanding the provisions of Part II of this Act) (i) on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.



(4) Subject to the foregoing provisions of this section, a medical board may deal with a case on a review in any manner in which they could deal with it on an original reference to them (*k*), and in particular may make a provisional assessment notwithstanding that the assessment under review was final (*l*); and the last foregoing section shall apply to an application for a review under this section and to a decision of a medical board in connection with such an application as it applies to an original claim for disablement benefit and to a decision of a medical board in connection with such a claim (*m*).

#### NOTES

**General effect of section.**—This section gives power to a medical board to review at any time a decision of a medical board or medical appeal tribunal on fresh evidence that the decision was obtained by non-disclosure or misrepresentation (whether fraudulent or not), or in cases where there has been a substantial and unforeseen aggravation of the results of the relevant injury which would lead to substantial injustice if there were no revision of the assessment. As in section 39, *ante*, no review is permitted until after the lapse of fixed periods of time.

Other powers of review are given by sections 37 (6), *ante*, and 50, *post*. The present section is confined to disablement questions.

A general power to review weekly payments was given by section 11 of the Workmen's Compensation Act, 1295; Willis 365.

A power of review similar to that given by the present section is contained in paragraph 67 of the Royal Warrant (Cmd. 6799) relating to Service Pensions.

(a) **Medical board or medical appeal tribunal.**—These are constituted under section 38, *ante*, and their decisions are given under section 39, *ante*.

(b) **Satisfied by fresh evidence.**—Though evidence of fraud may sometimes emerge in the course of a review under this section it is not necessary to prove it, and therefore it will not be necessary to satisfy the board or tribunal "beyond all reasonable doubt" as in the proof of a criminal charge. Otherwise it would be a little curious to find a medical board or medical appeal tribunal charged with the investigation of such matters, though it appears from section 38 (2), *ante*, that the chairman of a medical appeal tribunal need not be a medical practitioner.

"Fresh evidence" is not confined, as in the rule as to adducing fresh evidence in the appellate courts of common law, to facts which could not with reasonable diligence have been discovered before (see R.S.C., Ord. 58 Rule 4 and notes thereto; Annual Practice, 1945, 1299), and there seems to be no reason why it should be so confined. Nor is there any limitation as to how or by whom the fresh evidence may be brought before the board or tribunal, nor anything limiting it to evidence which would be admissible in a court of law. These matters will probably to some extent be dealt with by regulations.

(c) **In consequence of the non-disclosure or misrepresentation of a material fact.**—The decision must have been given because of, and not in spite of, the non-disclosure or misrepresentation. Non-disclosure can either be of all the material facts or of such facts as make those which are stated absolutely false (*Peek v. Gurney* (1873), L.R.6.H.L. 377, at page 403; 35 Digest 21, 119). Misrepresentation is a representation which at the material date was false in substance and in fact. It can be made by statements, written or oral, or by conduct. Silence, as in the case of a failure to contradict a statement heard or read and known to be false, may amount to misrepresentation. See, for example, *Cundy v. Lindsay* (1878), 3 App. Cas. 459, at p. 465; 35 Digest 98, 72. The non-disclosure or misrepresentation must be of a material fact, that is a fact which, if not hidden or misrepresented, would affect the decision of the board or tribunal. Non-disclosure or misrepresentation of the law, for example some section of this Act or a regulation made under it, is not within this provision. A statement of an opinion which turns out to be wrong is not fraudulent, so long as a person truly and correctly stated what his opinion was. *Bisset v. Wilkinson*, [1927] A.C. 177, P.C.; 35 Digest 9, 22. Nor is it a non-disclosure of fact for a man to keep his opinion to himself. "Fraudulent" means with an absence of any honest belief in the truth of the representation (*Derry v. Peek* (1889), 14 App. Cas. 337, at p. 374; 35 Digest 27, 185). Fraudulent non-disclosure means non-disclosure with intent to defraud or deceive, and imports the question of motive, which is irrelevant in considering fraudulent misrepresentation. It is not, however, necessary to prove fraud in any case under this section, though it may emerge in the course of the inquiry. As to the general law, see 23 Halsbury's Laws (2nd Edn.), 1 *et seq.* "Claimant" means a person claiming benefit, and includes (a) an applicant for a declaration that an accident was or was not an industrial accident; and (b) in relation to the review of an award or decision, a beneficiary under the award or affected by the decision (section 88 (1), *post*). A "beneficiary", in relation to any benefit, means the person entitled to that benefit (*ibid.*). Note that the non-disclosure or misrepresentation may be by the claimant "or any other person"—the widest possible expression.

Paragraph 67 (1) (d) of the Royal Warrant (Cmd. 6799) gives a power of review if



"the Minister [of Pensions] has reason to believe that the award has been obtained by improper means".

Section 43 (1) (b) of the Workmen's Compensation Act, 1925; Willis 581; provided for the suspension of compensation if it was proved that the workman had at the time of entering the employment "wilfully and falsely represented himself in writing" as not having previously suffered from an industrial disease. It was also competent for the workman to proceed under the Act to have an agreement, made under section 21; Willis 487; set aside on the ground, among others, of fraud. See the cases collected in Willis 494-495.

(d) **Relevant loss of faculty.**—This means the loss of faculty resulting from the relevant injury (section 88 (1), *post*). "Relevant injury" means, in relation to any benefit, the injury in respect of which that benefit is claimed or payable (*ibid.*). As to the assessment of the disablement resulting from the relevant loss of faculty, see section 12, *ante*.

(e) **Substantial and unforeseen aggravation of the results of the relevant injury.**—For cases where the injury was aggravated by the condition of the workman, see Willis 18, 241, 242. The aggravation, i.e. becoming more serious—worsening, of the results must be substantial, not merely trivial, and must be unforeseen, i.e. not foreseen by the previous board or tribunal (though not necessarily unforeseeable), before the medical board can review the decision. "Satisfied" means "satisfied on balance" not "beyond all reasonable doubt" as in a criminal case. See note (b), *supra*. As to the "relevant injury", see note (d), *supra*.

(f) **Period taken into account by the assessment.**—As to this, see section 12 (4), *ante*.

(g) **Substantial injustice.**—This is an expression which is difficult to define but fairly easy to apply to the facts of any particular case. It is, in this proviso, largely a medical question. Similar expressions occur in a number of enactments relating to appeals. For example in R.S.C., Ord. 39, Rule 6; Annual Practice, 1945, 733; the expression "some substantial wrong or miscarriage" is used in connection with applications to the Court of Appeal for a new trial. In the Matrimonial Causes Rules, 1944, Rule 68 (6); S.R. & O. 1944 No. 389/L.16, the expression "substantial wrong or miscarriage" is used in connection with appeals from courts of summary jurisdiction to the divisional court of the Probate Division of the High Court of Justice. In section 4 of the Criminal Appeal Act, 1907; 4 Halsbury's Statutes 728; the expression "substantial miscarriage of justice" is used in relation to criminal appeals. For authorities, see 26 Halsbury's Laws (2nd Edn.) 127, and 9 Halsbury's Laws (2nd Edn.) 273.

(h) **No review without leave during certain periods.**—The method of applying for leave is not specified. It will presumably be prescribed by regulations. The purpose of this subsection appears to be the same as that of the proviso to section 39 (2), *ante*. See note (h) to that section. As to provisional assessment, see section 12 (4), *ante*.

(i) **The provisions of Part II of this Act.**—This is the Part of the Act dealing with benefit. The provision most relevant seems to be section 12 (4), *ante*.

(k) **Original reference.**—As to this, see section 39, *ante*.

(l) **Provisional and final assessments.**—As to these, see section 12 (4), *ante*.

(m) **Original claim for disablement benefit.**—As to this, see sections 7 (1) (b), 12 and 39 (1), *ante*, and section 45, *post*. Decisions of medical boards in connection with such claims are given under section 39 (1), *ante*.

**41. Reference to single doctor of questions as to temporary disablement.**—(1) Notwithstanding anything in the foregoing provisions of this Part of this Act (a), regulations (b) may provide that the disablement questions (c) may, with the consent of the claimant (d), be referred to a single medical practitioner (e) appointed by the Minister (f) instead of to a medical board (g):

Provided that the period to be taken into account by any assessment made by virtue of this section shall not exceed three months (h).

(2) Any decision on a reference made by virtue of this section shall have effect as if it were a decision of a medical board (i), and shall be subject to appeal and review, and may be referred for consideration to a medical appeal tribunal, accordingly (k).

(3) Regulations (l) may make provision as to the procedure to be adopted where, on a reference under this section, the medical practitioner is of opinion that a final assessment can be made but that the period to be taken into account exceeds three months (m).

#### NOTES

**General effect of section.**—This section gives a power of reference to a single medical practitioner instead of a medical board, with the claimant's consent, of questions



as to temporary disablement, where the period of disablement is likely to be assessed at not more than three months. These assessments are subject to appeal and review like any other assessment and provision is made for cases where the medical practitioner, when he considers the case, is of opinion that a final assessment can be made, but that the disablement will last longer than three months.

(a) **Foregoing provisions of this Part of this Act.**—This refers to sections 36 (1) (c), 39 and 40, *ante*.

(b) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they are to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this subsection at the time of going to press.

(c) **Disablement questions.**—As to these, see section 36 (1) (c) and section 36 (5), *ante*. They relate to loss of faculty and disablement, whether they result from an accident, and the permanence of the loss of faculty, the degree of disablement resulting and the period for which it should be assessed.

(d) **Claimant.**—This means a person claiming benefit and includes, where relevant, (a) an applicant for a declaration that an accident was or was not an industrial accident (section 49, *post*); and (b) in relation to the review of an award or decision, a beneficiary under the award or affected by the decision (section 88 (1), *post*).

(e) **Medical practitioner.**—This means a registered medical practitioner (section 88 (1), *post*), that is, any person for the time being registered under the Medical Acts (Medical Act, 1886, section 27; 11 Halsbury's Statutes 725). See also note (c) to section 38, *ante*. The regulations will probably provide for a panel of doctors or single doctors being appointed for specified areas for this purpose, possibly also for the *ad hoc* appointment of a local doctor for a particular case. As to payment, see section 53, *post*.

(f) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(g) **Medical board.**—As to the constitution of a medical board, see section 38, *ante*. As to references to a board, see section 39, *ante*.

(h) **Assessment of disablement not exceeding three months.**—The procedure under this section is only intended for cases where it is fairly obvious to the insurance officer, and the claimant (possibly on advice from his own doctor) agrees, that he will not be disabled to any extent for more than three months. If it turns out, when the appointed doctor examines the claimant that he cannot say that the disablement will only last for three months or less, subsection (3) applies.

(i) **Decision of a medical board.**—This is given under section 39 (1), *ante*.

(k) **Appeal, review and reference to medical appeal tribunal.**—As to these, see sections 39 and 40, *ante*.

(l) **Regulations.**—See note (b), *supra*. None have been made under this subsection at the time of going to press.

(m) **Final assessment.**—As to final assessments and the period to be taken into account in them, see section 12 (4), *ante*. This subsection provides for cases where the single doctor is of opinion that the disablement will last longer than the insurance officer, or probably the claimant, thought when the case was referred to the single doctor under this section. It should be remembered that this section is not intended for cases where a provisional assessment (see section 12 (4), *ante*), for a period of three months can be made, but for those where a final assessment for a period not exceeding three months can be made.

*Determination of claims and questions by Commissioner,  
local appeal tribunals and insurance officers*

**42. Appointment of Commissioner and deputy Commissioners.**

—(1) For the purposes of this Act (a) an Industrial Injuries Commissioner (b) (in this Act referred to as "the Commissioner") may be appointed by His Majesty and such number of deputy Commissioners as His Majesty thinks fit may be so appointed.

The Commissioner and deputy Commissioners shall be barristers or advocates of not less than ten years standing (c).

(2) Regulations (d) may make provision for enabling any case to be dealt with—

(a) if it appears to involve a question of law of special difficulty, not by the Commissioner or any deputy Commissioner alone, but by a tribunal consisting of any three of them (e);



- (b) if it appears to involve a question of fact of special difficulty, wholly or partly with the assistance of an assessor or assessors specially qualified (f) ;

and for enabling both the powers aforesaid to be exercised in a case which involves questions both of law and of fact.

(3) Unless the context otherwise requires, any reference in this Act to the Commissioner shall include a reference to a deputy Commissioner and to any tribunal constituted in pursuance of regulations made by virtue of subsection (2) of this section (g).

#### NOTES

**General effect of section.**—This section empowers the appointment of an Industrial Injuries Commissioner, with deputies. All are to be barristers (or advocates in Scotland) of not less than ten years' standing. The Commissioner's functions will be to hear appeals from the local appeal tribunals (constituted under section 43, *post*), which tribunals deal with references and appeals from insurance officers (appointed under section 44, *post*). He will also have power to direct the insurance officer to refer special questions to him (section 48, *post*). His decisions will be subject to review by the insurance officer in certain circumstances (section 50, *post*). It was said by the Minister of National Insurance in moving the Second Reading of the Bill in the House of Commons (414 H. of C. Official Report 281), that the Commissioner would be "a legal expert" appointed not by him but by His Majesty. In Committee he also stated that the deputies would be lawyers. This confirmed what was recommended in paragraph 36 (ii) of the White Paper on Social Insurance, Part II; Cmd. 6551; in September, 1944. As was stated in paragraph 22 of the Explanatory Memorandum on the Bill as introduced in June, 1945 (Cmd. 6651), the proposals for the appointment of the Commissioner and the constitution of the local tribunals and the rules governing procedure throughout (which are contained in Part III of this Act) are closely modelled on the existing provisions of the Unemployment Insurance Acts. See section 40 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 524; under which an Umpire and one or more deputy Umpires were empowered to be appointed by His Majesty. They have in fact been appointed from the Bar. As to the procedure under that Act, see generally, 34 Halsbury's Laws (2nd Edn.) 560 *et seq.*

The question was again raised in the House of Lords in Committee, when the Lord Chancellor repeated the Minister's undertaking and assured the House that it was intended to appoint as Commissioner a person whose standing was such that he would be suitable for a High Court Judgeship. However, an amendment was urged and accordingly on the Report Stage the second sentence of subsection (1) was added.

Subsection (2) provides for making regulations to enable tribunals to be formed of three, the Commissioner and two deputies, or three deputies, to deal with questions of law of special difficulty. This provides an alternative procedure to the reference of, or appeal on, questions of law to the High Court under section 37, *ante*, except that the section 37 procedure is limited to questions of law arising in connection with certain of the "special questions" which are there specified and which are to be determined by the Minister. See section 36 (1) (a) (i) to (iv) for these questions. They relate to employment in insurable employment and liability for contributions.

The corresponding section of the National Insurance Act, 1946, is section 43 (3) (c), which is, however, only an enabling section under which regulations may be made appointing a Commissioner and deputy Commissioners who will in fact be the same persons as those appointed under this Act.

(a) **For the purposes of this Act.**—These are mainly the purposes of sections 36, *ante*, 47, 48, 50 and 51, *post*.

(b) **Industrial Injuries Commissioner.**—The nearest parallel to this officer was the Umpire appointed under section 40 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 524. See General note, *supra*. The Commissioner and deputy Commissioners under this Act will be the same persons as those appointed under the National Insurance Act, 1946, section 43.

(c) **Appointment by His Majesty, and qualifications.**—The appointment will no doubt be made on the recommendation of the Lord Chancellor with the concurrence of the Minister of National Insurance. The number of deputy Commissioners will presumably be at least three, so as to enable a tribunal to be formed under subsection (2) without the Commissioner if he is for any reason unable to sit. The Commissioner's appointment will presumably be a "whole-time" appointment, the deputy Commissioners' "part-time" appointments. As to their payment, see section 53, *post*.

The second sentence of this subsection was added on the Report Stage in the House of Lords. (See General note, *supra*.) "Barristers" refers to members of the English Bar. "Advocates" to members of the Faculty of Advocates in Scotland. Either are qualified for these posts because of the importance at this level, as distinct from in the local tribunals, of uniformity of decision throughout Great Britain.

Superannuation allowance for Commissioners is dealt with in section 54, *post*.



(d) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*, section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(e) **Question of law of special difficulty to go to tribunal of three.**—This is a procedure not found in the Unemployment Insurance Act, 1935. It is to some extent an alternative procedure to the reference of questions of law to the High Court under section 37, *ante*. The kind of question envisaged is a question of construction of a section of this Act, or of the reconciling (if possible) of two conflicting sections or of the combined effect of sections of this Act and of some other Act. See note (a) to section 37, *ante*. The decision whether the case involves a difficult question of law will presumably be left to the Commissioner or his deputy, though the insurance officer or the insured person will presumably be entitled to apply for a tribunal of three. The purpose of having a tribunal of three is of course to secure that there shall be a majority decision in cases of disagreement.

Note that a tribunal of three and assessors may sit together if difficult questions of both law and fact are involved.

(f) **Question of fact of special difficulty requiring assessors.**—This procedure also is not found in the Unemployment Insurance Act, 1935. The practice of sitting with assessors, that is qualified experts in the particular subject involved in the case, is common in the courts of law. It is used in the Admiralty Division, in the County Court in actions and under the Workmen's Compensation Act, 1925, Sched. I (5); Willis 701; which empowered the judge to summon a medical referee to sit with him as assessor, to advise him on medical matters and assist him by his expert knowledge to come to a proper conclusion. Under the present Act the assessors who may be summoned are not confined to medical assessors. They may be experts in any subject, for example in the particular employment in which the claimant was working, in a case where some particularly difficult question arises on whether the accident arose "out of and in the course of" the employment. The decision whether the case involves a difficult question of fact will presumably be left to the Commissioner or his deputy, though the insurance officer or the insured person will presumably be entitled to apply for assessors. See also note (a) to section 37, *ante*.

As to payment of assessors, see section 53, *post*.

(g) **References in this Act to the Commissioner.**—These are mainly in sections 36, *ante*, and 47, 48, 50 and 51, *post*. Contexts otherwise requiring are subsections (1) and (2) of this section.

**43. Constitution of local appeal tribunals.**—(1) A local appeal tribunal (a) for the purposes of this Act (b) shall consist of one or more members chosen to represent employers, with an equal number of members chosen to represent insured persons (c), and a chairman appointed by the Minister (d).

(2) Regulations (e) may make provision that in such cases as may be prescribed (f) one or more medical practitioners (g) shall sit with the tribunal either as additional members or as assessors (h) and for the appointment by the Minister of medical practitioners to act for this purpose either generally or for such cases or for such tribunals as the Minister may determine (i).

(3) Panels of persons chosen to represent employers and insured persons respectively shall be constituted by the Minister for such areas as the Minister may think fit, and the members of the local appeal tribunal to be chosen to represent employers and insured persons shall be selected from those panels in the prescribed manner (k).

(4) Subject as aforesaid the constitution of local appeal tribunals shall be determined by regulations (l).

## NOTES

**General effect of section.**—This section provides for the constitution of local appeal tribunals, for hearing cases on reference or appeal from the insurance officer, and from which tribunals there is an appeal to the Commissioner. The constitution of the tribunals is closely modelled on the provisions of the Unemployment Insurance Acts. See paragraph 22 of the Explanatory Memorandum on the Bill as introduced in June, 1945 (Cmd. 6651). The Unemployment Insurance Act, 1935, section 41; 28 Halsbury's Statutes 525; provides for the constitution of courts of referees, consisting of representatives of employers and insured contributors, with a chairman appointed by the Minister. These persons are chosen from panels, as under this section, and are entitled to remuneration.

This form of tribunal was adopted, after careful consideration, in order to take the



question of benefit for industrial injuries out of the atmosphere of litigation and contention which had prevailed in the County Court under the Workmen's Compensation Acts.

A somewhat similar procedure was created by section 30 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1223. See now section 43 (3) (b) of the National Insurance Act, 1946, which empowers the making of regulations creating local tribunals.

(a) **Local appeal tribunal.**—This must not be confused with a medical appeal tribunal, constituted under section 38, *ante*.

(b) **For the purposes of this Act.**—That is, for the purposes of sections 36, *ante*, and 45–51, *post*.

(c) **Members representing employers and insured persons.**—This is the same representative composition as that of the courts of referees under section 41 of the Unemployment Act, 1935; 28 Halsbury's Statutes 525. It is not intended that these representative members shall be drawn from the particular industry concerned in the cases, or majority of cases, before them on a particular day, but to choose men who have developed a general background of industrial knowledge from their experience. As to employers, see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*. "Insured persons" means persons employed in insurable employment (section 88 (1), *post*). As to insurable employment, see section 1, *ante*, and the First Schedule, *post*.

(d) **Chairman appointed by the Minister.**—The intention was expressed in the White Paper on Social Insurance, Part II, paragraph 36 (ii) (Cmd. 6551), September, 1944, and during the passage of the Bill through Parliament that the chairman should be an independent chairman with legal qualifications. This follows the practice adopted for courts of referees (see note (c), *supra*). This intention has been re-affirmed by the Minister in Committee. Points of law will still arise in these cases; some of them will be difficult ones, especially when the Act is first in operation. The chairmen are to be paid, though presumably the appointment will not be "whole-time", but paid as to each court over which the chairman presides. There is nothing in the Act restricting the appointments to lawyers.

In the House of Lords, the Government was urged to accept an amendment providing that the chairman should be a barrister or solicitor, or an advocate or law agent in Scotland. The amendment was, however, withdrawn on the Lord Chancellor's undertaking that as far as possible lawyers would be appointed, but pointing out that it would be inconvenient to have a rule that the chairman must be a lawyer, if none were available at some particular place or time. As to payment of chairmen, see section 53, *post*.

"The Minister" means the Minister of National Insurance (section 88 (1), *post*).

(e) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(f) **Prescribed.**—This means prescribed by regulations (section 88 (1), *post*). The cases prescribed will presumably be those where medical questions arise which are not among those appropriate to a medical board under section 36, *ante*. Such would be questions whether some particular injury could be said to be due to an "accident" where it was the result of a disease not an "industrial disease".

(g) **Medical practitioners.**—This means registered medical practitioners (section 88 (1), *post*), that is, any persons for the time being registered under the Medical Acts (Medical Act, 1886, section 27; 11 Halsbury's Statutes 725). See also note (c) to section 38, *ante*.

(h) **Assessors.**—As to assessors, cf. the practice of summoning a medical referee as an assessor to help a county court judge under Sched. I (5) of the Workmen's Compensation Act, 1925; Willis 701; and see note (f) to section 42, *ante*. This section, however, only contemplates medical assessors. As to payment of assessors, see section 53, *post*.

(i) **For such cases or tribunals as the Minister may determine.**—This allows general or *ad hoc* appointments of doctors, depending upon the demands of the particular area for which the appeal tribunal sits. In some areas a medical assessor may be needed often, in others rarely.

(k) **Panels of representatives of employers and insured persons.**—These will be modelled on the panels in use for courts of referees under section 41 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 525. It is not intended to classify these persons as representatives of the particular industries they know best or to summon them only to hear cases concerning those industries, but to choose them for general experience and knowledge, though of course people from one area will all tend to know the local industries best. See note (c), *supra*. It is intended to make use of the panels of persons whose names are put forward, at the request of the area employment committees of the Ministry of Labour, by organisations of employers and workmen. These panels have long been successfully used to make up courts of referees on



the basis of general experience and knowledge rather than experience and knowledge of one industry only. It is, however, intended that when insured women are to appear before a tribunal, that tribunal shall contain at least one woman. This was the practice as to courts of referees (see paragraph 4 (2) of the Unemployment Insurance (Courts of Referees) Regulations, 1936 (S.R. & O. 1936 No. 334). As to payment of representative members, see section 53, *post*.

The areas of the local appeal tribunals will probably correspond to those of the county courts, which have for so long administered the Workmen's Compensation Acts.

(f) **Regulations.**—None have been made under this subsection at the time of going to press. They will deal with matters necessary to carry out the general principles laid down by the section, such as areas of jurisdiction, payment of chairman and, perhaps, as was urged on the Minister in Committee, of representative members also. They will probably also prescribe what, if any, are to be the necessary qualifications for chairmen of tribunals; see also note (e), *supra*.

**44. Appointment of insurance officers.**—For the purposes of this Act, officers (a), in this Act referred to as "insurance officers", shall be appointed by the Minister (subject to the consent of the Treasury as to number) to act for such areas as the Minister directs (b).

#### NOTES

**General effect of section.**—This section provides for the appointment of "insurance officers" who are the first tribunal to which all claims for benefit have to be submitted and are really the backbone of the administration of benefit. Their functions under this Act are almost the same as those of the insurance officers appointed, formerly under section 42 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 525; and now under section 43 (3) (a), of the National Insurance Act, 1946.

(a) **For the purposes of this Act.**—This means sections 36 and 39, *ante*, and 45-51, *post*.

(b) **Appointment of insurance officers.**—No particular qualification is laid down for insurance officers under this Act, but it is apparently hoped (see the Debate on the Second Reading of the Bill; 414 H. of C. Official Report, 356) that officers of mutual insurance companies, of employers and of trade unions, who have had experience of operating the Workmen's Compensation Acts, will offer themselves for these posts. As to payment, see section 53, *post*. The appointments will clearly be "whole-time" appointments.

"The Minister" means the Minister of National Insurance (section 88 (1), *post*). The Treasury are of course concerned with payment. Their consent will presumably be given generally by inter-departmental communication. The areas will probably be those of the local appeal tribunals.

**45. Determination of claims by insurance officer and references to local appeal tribunal.**—(1) All claims for benefit (a) shall be submitted forthwith to one of the insurance officers (b) and, subject to the provisions of this Part of this Act (c), all questions arising in connection with any such claim or with an award of benefit (d) shall in the first instance be so submitted.

(2) The insurance officer shall forthwith take into consideration any claim or question submitted to him for examination as aforesaid (e).

(3) If on consideration of a claim or question the insurance officer is of opinion that no special question (f) arises, then—

(a) if he is satisfied that the claim ought to be allowed in whole or in part or that the question ought to be determined in favour of the claimant or beneficiary (g), he may allow the claim or determine the question accordingly;

(b) in so far as he is not so satisfied, he may either—

(i) refer the claim or question (so far as is practicable (h) within fourteen days from the date on which it was submitted to him for examination) to the local appeal tribunal for their decision (i); or

(ii) himself determine that an award (k) cannot be made, or determine the question adversely to the claimant or beneficiary, as the case may be.

#### NOTES

**General effect of section.**—This section gives the insurance officer his powers which are closely modelled on those given to insurance officers by section 43 of the



Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 525. His powers are to hear in the first place all claims for benefit and all incidental questions except certain questions specified by section 36, *ante*. He may either deal with the claim or question himself or refer it to the local appeal tribunal. In the National Insurance Act, 1946, see section 43 (3) (a) and (b), which is, however, less detailed than the present section and leaves the matter to be dealt with by regulations.

(a) **Claims for benefit.**—"Claim", by section 88 (1), *post*, includes (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *post*); and (b) in relation to the review of an award or decision, a claim by a beneficiary under the award or affected by the decision. "Benefit" means benefit under this Act (section 88 (1), *post*).

(b) **Submitted forthwith to one of the insurance officers.**—As to their appointment, see section 44. They are the first tribunal in every case. "Submitted" will probably be further explained by regulations, whether written application has to be made etc. "Forthwith" is the same as "immediately", that is, as soon as possible in the circumstances (*Re Southam, Ex parte Lamb* (1881), 19 Ch.D. 169, 173, C.A.; 42 Digest 952, 256). This is a question of fact in each case.

(c) **Subject to the provisions of this part of this Act.**—This refers mainly to section 36 (1), *ante*, which provides special procedure for certain questions. All other questions are allocated to the insurance officer in the first place by section 36 (2), *ante*.

(d) **Award of benefit.**—The word "award" is used in this and other similar Acts, but is not defined. It means, of course, a decision by the appropriate officer or tribunal that a claimant is entitled to benefit. It was used in the Workmen's Compensation Act, 1925, in connection with arbitrations under Schedule I; Willis 657 *et seq.* As to the form and effect of an award of compensation, see Workmen's Compensation Rule 30; Willis 817. For the form of an award, see pages 893 *et seq.*, and for authorities, see Willis 674. The essential difference between an award under that Act, and an award under this Act, is that the former is made in proceedings between employer and workmen, while the latter is not.

(e) **Consideration of claim.**—This is apparently to be private and informal; anything in the nature of a public hearing at this stage is obviously undesirable and contrary to the scheme of the Act. No question of advocates arises at this stage. Cf. sections 46 and 47, *post*.

(f) **Special question.**—As to these, see section 36 (1) and (5), *ante*. They relate to insurable employment, contributions, increase of disablement pension for constant attendance under section 15, *ante*, death benefit where two or more persons are entitled, and to whether a person is or was a "child" and questions related thereto; they also include the "disablement questions" set out in section 36 (1) (c), *ante*.

(g) **Claimant or beneficiary.**—"Claimant" means a person claiming benefit (section 88 (1), *post*). See also note (a), *supra*. "Beneficiary", in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*).

(h) **So far as is practicable.**—This expression also occurred in a similar context in section 43 (3) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 526. It is not defined but clearly means "so far as is reasonably possible".

(i) **Reference to local appeal tribunal.**—This tribunal is constituted under section 43, *ante*. As to its jurisdiction, whether on reference or appeal, see section 46, *post*. The tribunal corresponds to the court of referees constituted under sections 41 and 43 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 525; and, now, to the local tribunal authorised by section 43 (3) (b) of the National Insurance Act, 1946. As to procedure before the tribunal, see sections 46 and 51, *post*.

(k) **Award.**—As to this, see note (d), *supra*.

#### 46. Appeals to and decisions of local appeal tribunals.—(1) Where—

- (a) a claimant or beneficiary (a) is dissatisfied with the insurance officer's decision (b); or
- (b) a person's right to benefit is or may be, under the Fourth Schedule to this Act, affected by the insurance officer's decision in favour of the claimant or beneficiary (c);

he may appeal in the prescribed manner and within the prescribed time (d) and the case shall be referred to the local appeal tribunal (e):

Provided that, where a special question (f) has arisen in connection with the decision and has been determined as required by this Act (g), and the insurance officer certifies (h) that the decision on that question is the sole



ground of his decision, no appeal shall lie without the leave of the chairman of the local appeal tribunal (i).

(2) A local appeal tribunal shall—

- (a) record in writing all their decisions (whether on an appeal or on a reference from the insurance officer) ; and
- (b) include in the record of every decision a statement of their findings on questions of fact material to the decision (k).

### NOTES

**General effect of section.**—This section gives claimants or beneficiaries a right of appeal from the insurance officer's decision to the local appeal tribunal. It also gives a similar right of appeal to persons who satisfy the conditions for the receipt of death benefit but who are precluded, under the Fourth Schedule, *post*, from claiming benefit because some other person has been awarded benefit in respect of the same death.

The right of appeal is similar to that given by section 43 (6) of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 526 ; from an insurance officer to a court of referees. There was also a somewhat similar right of requiring reference of a question to a referee under section 30 (2) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 ; 29 Halsbury's Statutes, 1223 ; see, now, sections 43 (3) (b) and (5) of the National Insurance Act, 1946, where the right of reference and appeal to a local tribunal, and the procedure, are left to be dealt with by regulations.

The section also provides that the tribunal shall record in writing their decisions and their findings of fact.

(a) **Claimant or beneficiary.**—Claimant, by section 88 (1), *post*, means a person claiming benefit, and includes (a) an applicant for a declaration that an accident was or was not an industrial accident (section 49, *post*) ; and (b) in relation to the review of an award or decision, a beneficiary under the award or affected by the decision. " Beneficiary ", in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*).

(b) **Dissatisfied with the insurance officer's decision.**—" Dissatisfied with " is also used in section 39, *ante*, and means no more nor less than it says. It is not an expression with a special meaning, like " aggrieved by ". See note (e) to section 39, *ante*, and note (e) to section 37, *ante*. The insurance officer's decision is given under section 45, *ante*.

(c) **Person's right to benefit under the Fourth Schedule.**—This Schedule, *post*, deals with cases where two or more persons satisfy the conditions, in respect of the same death, for receipt of an allowance under section 21, *ante* (relating to children of the deceased's family), or for receipt of a pension under section 23, *ante* (relating to relatives) or under section 24, *ante* (relating to women having care of the deceased's children). It also fixes rates and amounts of pensions and gratuities for parents and relatives. The application of these provisions to cases of competing claims for death benefit is now a " special question " for the Minister under section 36 (1) (a) (vi), *ante*.

(d) **Prescribed manner and time of appeal.**—This means prescribed by regulations (section 88 (1), *post*), which will be made under section 51 (1) (a), *post*. Under the Unemployment Insurance Act, 1935, the time was twenty-one days, which was specified in section 43 (6) ; 28 Halsbury's Statutes 526. The prescribed manner of appeal under that Act, was to be found in paragraph 6 of the Unemployment Insurance (Courts of Referees) Regulations, 1936 (S.R. & O. 1936 No. 334). No regulations have yet been made under section 51.

(e) **Local appeal tribunal.**—This is constituted under section 43, *ante*. It also has power to hear cases on reference under section 45, *ante*. As to procedure, see note (k), *infra*, and section 51, *post*.

(f) **Special question.**—As to these, see section 36 (1) and (5), *ante*. They relate to insurable employment, contributions, increase of disablement pension for constant attendance under section 15, *ante*, death benefit where two or more persons are entitled, and to whether a person is or was a " child " and questions related thereto. They also include the " disablement questions " set out in section 36 (1) (c), *ante*.

(g) **Determined as required by this Act.**—Section 36 (1), *ante*, requires them to be determined by the Minister except those relating to children, which are to be determined as under the Family Allowances Act, 1945, i.e. under section 5 thereof ; 32 Statutes Supp. 77 ; and the disablement questions, which are to be determined by a medical board or medical appeal tribunal under section 39, *ante*. See note (n) to section 36, *ante*.

(h) **Certifies.**—This will be done in writing and the form will no doubt be prescribed by regulations under section 51 (1) (a), *post*.

(i) **No appeal without leave in certain cases.**—These are cases where the insurance officer has referred a special question for decision, which he is required to do under section 48 (1), *post*, and is satisfied that it has been determined as required by



section 36 (1), *ante*, and that it is the sole ground of his decision. An example would be a case where an insurance officer refused benefit after he had referred the question whether a claimant at the relevant time was employed in insurable employment (section 36 (1) (a) (i), *ante*), and it had been decided by the Minister under that subsection that he was not. This would be fatal to the claim but might be a point of difficulty which would justify giving leave to appeal. Regulations made under section 51 (1) (a), *post*, will presumably prescribe the method of applying for and granting leave. As to the chairman, see note (d) to section 43, *ante*.

(k) **Record of decisions and findings of fact.**—Section 41 (5) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 525; contained a similar provision. In the present section also a record is required in every case, whether it be an appeal under this section or a reference under section 45, *ante*, and whether or not an appeal to the Commissioner, with or without leave, is contemplated. As to recording grounds of appeal under this Act, see section 47 (5), *post*. As to questions of fact and questions of law, see sections 37 and 42, *ante*.

Procedure generally before the tribunal will be governed by regulations made under section 51, *post*, and will presumably be similar to that before a court of referees. The hearings were not originally intended to be public (cf. paragraph 7 of the Unemployment Insurance (Courts of Referees) Regulations, 1936 (S.R. & O. 1936 No. 334)), but on the Report Stage subsection (3) was added to section 51, *post*, as the result of representations made in Committee. It provides that regulations shall provide that any hearing is to be in public except in so far as the tribunal for special reasons otherwise directs.

In *Mason v. Brewis Brothers, Ltd.*, [1938] 2 All E.R. 420; Digest Supp.; a case decided on section 44 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 526; it was decided that a court of referees was an administrative, and not a judicial, body and that therefore communications to the labour exchange for the use of the court of referees were not absolutely privileged for the purposes of a libel action.

The appearance of advocates before the tribunal is dealt with by the power to make regulations given in section 51 (3), *post*, a power which was added by amendment on the Report Stage in the House of Lords. Counsel and solicitors, but not other advocates, were excluded from audience before the courts of referees by paragraph 7 of the Unemployment Insurance (Courts of Referees) Regulations, 1936; *supra*.

**47. Appeals to Commissioner.**—(1) Subject as hereinafter provided (a), an appeal shall lie to the Commissioner (b) from any decision of a local appeal tribunal (c)—

- (a) at the instance of an insurance officer (d);
- (b) at the instance of the claimant or beneficiary or a person whose right to benefit is or may be, under the Fourth Schedule to this Act, affected by the decision appealed against (e); or
- (c) at the instance of an association of employed persons (f) of which the claimant or beneficiary or, in a case relating to death benefit (g), the deceased (h) was a member at the time of the relevant accident (i):

Provided that no such appeal shall lie without the leave of the tribunal or of the Commissioner (k).

(2) An appeal to the Commissioner must be brought within three months from the date of the decision of the local appeal tribunal or such further period as may be prescribed or as the Commissioner may in any case for special reasons allow (l).

(3) Where leave to appeal from a local appeal tribunal is not granted when the decision of the tribunal is given, an application for such leave may be made by the person desiring to appeal in such form and within such time after the date of the decision as may be prescribed, but any such application shall be made in the first instance to that tribunal and not to the Commissioner except where the application is combined with an application under the last foregoing subsection for extension of the time for appealing (m).

(4) An application for leave to appeal under this section shall be granted by the tribunal or Commissioner if it appears to them or him that there is a principle of importance involved in the case, or that there are any other special circumstances by reason of which leave to appeal ought to be given (n).

(5) Where the local appeal tribunal grant leave to appeal, they shall record in writing a statement of the grounds on which leave to appeal is granted (o).



# NOTES

**General effect of section.**—This section gives a right of appeal to the Commissioner from any decision of a local appeal tribunal. It is modelled on section 44 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 526; which governed appeals from courts of referees to the Umpire under that Act. As originally drafted, the section allowed the insurance officer to instigate an appeal in any case, while the claimant or beneficiary or other interested parties were required to obtain leave. This distinction was attacked in the House of Commons on the Second Reading of the Bill and was removed by amendment in Committee. Leave to appeal may be given by the local appeal tribunal at the time when its decision is given or on a subsequent application, which must be made first to the tribunal and then, if refused, to the Commissioner. In the section as originally drafted, leave to appeal could only be given by the chairman of the local appeal tribunal. On the Report Stage the section was amended so as to give the power to the tribunal as a whole.

Amendments providing for reference of points of law to the High Court with the Commissioner's approval, similar to the procedure established by section 37, *ante*, and for the right to require the Commissioner to state a case for the opinion of the High Court (a common procedure in other branches of the law) were rejected in both Houses in Committee. The section does not, however, unlike section 44 (6) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 527; provide that his decision shall be final. It is subject to review under section 50, *post*. The reasons for rejecting the amendments were that it is intended to avoid the delay, expense and formality of an appeal to the Court of Appeal and House of Lords, with perhaps a majority decision at the end of it all; that the method of having a Commissioner is the only other one by which uniformity between England and Wales on the one hand and Scotland on the other can be secured, a difficulty which arises in appeals from pensions tribunals which go to a nominated judge in each country with consequent differences of opinion; and that the Commissioner may sit with two deputy Commissioners (section 42 (2) (a), *ante*), all distinguished lawyers, the Commissioner at least being of equivalent status to a High Court Judge.

(a) **Subject as hereinafter provided.**—This refers to the later provisions of this section.

(b) **The Commissioner.**—As to his appointment and qualifications, see section 42, *ante*.

(c) **Any decision of a local appeal tribunal.**—These are given under section 46, *ante*, and may be either on appeal under that section from the insurance officer or on reference by him under section 45, *ante*. As to the constitution of the tribunal, see section 43, *ante*.

(d) **At the instance of an insurance officer.**—As to the appointment and powers of insurance officers, see sections 44 and 45, *ante*.

(e) **The claimant or beneficiary or person having rights under the Fourth Schedule.**—"Claimant" means a person claiming benefit, and includes (a) an applicant for a declaration that an accident was or was not an industrial accident (section 49, *post*); and (b) in relation to the review of an award or decision, a beneficiary under the award or affected by the decision.

"Beneficiary", in relation to any benefit, means the person entitled to that benefit. "Benefit" means benefit under this Act. For these definitions, see section 88 (1), *post*. A person having rights under the Fourth Schedule, *post*, is one of two or more persons who satisfy the conditions for death benefit in respect of the same death, or who would be entitled to a pension, a gratuity and an allowance under different sections in respect of a death, but for the provisions of the Schedule. The Schedule also fixes the rate of parents' and relatives' pension and gratuity. This paragraph was amended on the Report Stage in consequence of the amendments to the death benefit sections, *ante*.

(f) **Association of employed persons.**—This provision is adapted from that contained in section 44 (1) (b) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 526. It has been decided under an earlier section that an association of employed persons is an association which has, as an important and declared part of its functions, the furtherance of the interest of the members in relation to their employment and unemployment (Umpire's Decision 3809/1930). This of course includes trade unions.

(g) **Death benefit.**—As to this, see sections 19-24, *ante*.

(h) **The deceased.**—This, in relation to death benefit, means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *post*).

(i) **Relevant accident.**—This means, in relation to any benefit, the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(k) **No appeal without leave.**—Under this proviso as originally drafted the leave of the local appeal tribunal had to be given by the chairman. The same practice applies to courts of referees. See section 44 (1) (c) (ii) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 526. The amendment of the proviso into its present form was made on the Report Stage. The application for leave has to be made under subsection (3). The principles on which applications are to be granted are set out in



subsection (4). Amendments deleting reference to the chairman of the tribunal have been made throughout the section.

(l) **Time for appealing.**—This subsection differs somewhat from section 44 (2) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 526. The date of the decision will be the date on which it is actually given, and the record in writing of it, made under section 46 (2) of the present Act, *ante*, should bear that date if the record was not made on the day when the decision was given. As under the Unemployment Insurance Act, *supra*, the Commissioner may extend the time for appealing; the local appeal tribunal may not. "Prescribed" means prescribed by regulations (section 88 (1), *post*). These will be made under section 51 (1) (a), *post*. None have been made at the time of going to press.

(m) **Application for leave.**—Leave is necessary in all cases under this section as amended in Committee. It should be asked for at the time when the local appeal tribunal gives its decision, for it will usually have been decided by then whether the case is one which it is desired to take to the Commissioner. There is nothing to prevent an appeal being abandoned, even though leave to appeal has been given. If leave is asked for at the hearing, no formal application is necessary; otherwise the form and time limit prescribed (i.e., by regulations (section 88 (1), *post*) made under section 51 (1) (a), *post*) must be observed. No such regulations have been made at the time of going to press. The only case in which it is not necessary to apply first to the local appeal tribunal is where an extension of time is also being asked for. As to extensions of time under the Unemployment Insurance Act, 1935, section 44 (2); 28 Halsbury's Statutes 526; see *Umpire's Decisions* 1944/1930 and 9145/1931 set out in 34 Halsbury's Laws (2nd Edn.) 566. As to applications for leave, see Regulation 8 of the Unemployment Insurance (Courts of Referees) Regulations, 1936 (S.R. & O. 1936 No. 334).

(n) **Cases in which leave should be given.**—This subsection is copied from section 44 (4) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 527.

Note that it does not limit appeals to questions of law. There may be questions of fact which are of great importance because they affect large numbers of other cases in which the material facts are the same.

(o) **Record of grounds of leave to appeal.**—This provision is copied from section 44 (5) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 527. A copy of the record will of course have to be sent to the Commissioner before he hears the appeal. This will no doubt be done by the local appeal tribunal's clerk.

It was stated categorically by the Minister in Committee that the decisions of the Commissioner sitting in both forms, would be completely reported. This has been the practice under the Unemployment Insurance Acts. The *Umpire's* decisions, with reasons, are fully published.

On the Report Stage subsection (3) was added to section 51, *post*, providing that regulations shall provide that any hearing shall be in public except in so far as the Commissioner for special reasons otherwise directs.

The appearance of advocates before the Commissioner is to be dealt with by regulations under section 51 (3), *post*, which was amended on the Report Stage in the House of Lords so as to make clear the extent of the regulation-making power.

**48. Reference of special questions.**—(1) If on consideration of a claim or question the insurance officer is of opinion that a special question arises (a), he shall, subject to and in accordance with regulations (b)—

- (a) refer the special question for determination as required by this Part of this Act (c); and
- (b) deal with any other questions (d) as if the special question had not arisen.

(2) Regulations made under the last foregoing subsection may provide—

- (a) for authorising the postponement of the reference of or dealing with any question until after other questions have been determined; and
- (b) for authorising (in cases where the determination of any question disposes of a claim or any part thereof) the making of an award, or of a decision that an award cannot be made, as to the claim or that part thereof without referring or dealing with, or before the determination of, any other question (e).

(3) The foregoing provisions of this section shall apply to a local appeal tribunal and the Commissioner as they apply to the insurance officer, except that a local appeal tribunal or the Commissioner, instead of themselves or himself referring a special question for determination as required by this Part of this Act, shall direct it to be so referred by the insurance officer (f).



# NOTES

**General effect of section.**—This section provides for the reference of special questions by the insurance officer, local appeal tribunal or Commissioner for determination as provided by section 36, *ante*, and gives a general power to postpone the determination of any question until others have been determined, or to make or refuse an award as a result of the determination of a question, if that question be decisive.

(a) **Special question arising on consideration of case by insurance officer.**—The insurance officer is appointed under section 44, *ante*, and considers claims or questions under section 45, *ante*. "Special questions" are those set out in section 36 (1), *ante*. They relate to insurable employment, contributions, entitlement to increased benefit in respect of constant attendance, persons precluded from benefit by the Fourth Schedule, *post*, and "children" within the meaning of the Act, and include the "disablement questions". As to "claim", see note (e), *infra*.

(b) **Subject to and in accordance with regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(c) **Determination as required by this Part of this Act.**—This is provided for by section 36, *ante*, which lays down different procedure for different types of special question.

(d) **Any other questions.**—For example, the all-important question whether the relevant accident arose out of and in the course of the employment (sections 1 and 7, *ante*), subject to section 49, *post*.

(e) **Cases where the determination of any question disposes of claim or part thereof.**—For example, the decision that an accident was not an industrial accident (section 49, *post*). As to the insurance officer's certificate in such cases, see section 46 (1), *ante*, relating to appeals to the local appeal tribunal. "Claim", by section 88 (1), *post*, means a claim for benefit and includes (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *post*); and (b) in relation to the review of an award or decision, a claim by a beneficiary under the award or affected by the decision. "Award" is not defined. It means a decision that a claimant is entitled to benefit. See, generally, as to "award", note (d) to section 45, *ante*.

(f) **Local appeal tribunal and the Commissioner.**—The local appeal tribunal is constituted under section 43, *ante*, and hears references and appeals under sections 45 and 46, *ante*. The Commissioner is appointed under section 42, *ante*, and hears appeals under section 47, *ante*. This subsection gives them a certain supervisory jurisdiction over the insurance officer. As to referring special questions for determination, see subsection (1) (a), and note (c), *supra*. The local appeal tribunal or Commissioner is required to direct any special question which arises on a hearing before them, to be referred by the insurance officer and not to refer it themselves. This simplifies procedure and means that if the special question, when determined, is decisive, the case need not be sent back to them but can be dealt with by the insurance officer.

**49. Declarations that accident is an industrial accident.**—(1) Where, in connection with any claim for benefit (a), it is determined that the relevant accident (b) was or was not an industrial accident (c), an express declaration (d) of that fact shall be made and recorded and (subject to the provisions of subsection (3) of this section) a claimant shall be entitled to have the question whether the relevant accident was an industrial accident determined notwithstanding that his claim is disallowed on other grounds (e).

(2) Subject to the provisions of the next following subsection, any person suffering personal injury by accident (f) shall be entitled, if he claims the accident was an industrial accident, to have that question determined and a declaration made and recorded accordingly, notwithstanding that no claim for benefit has been made in connection with which the question arises, and the provisions of this Part of this Act shall apply for that purpose as if the question had arisen in connection with a claim for benefit (g).

(3) Notwithstanding anything in the last two foregoing subsections, the insurance officer, local appeal tribunal or Commissioner (h), as the case may be, may refuse to determine the question whether an accident was an industrial accident if satisfied that it is unlikely that it will be necessary to determine the question for the purposes of any claim for benefit; but any such refusal of an insurance officer or local appeal tribunal shall be subject to appeal to the local appeal tribunal or Commissioner, as the case may be (i).



(4) Subject to the provisions of this Part of this Act as to appeal and review, any declaration under this section that an accident was or was not an industrial accident shall be conclusive for the purposes of any claim for benefit in respect of that accident, whether or not the claimant is the person at whose instance the declaration was made (*k*).

(5) For the purposes of this section, an accident whereby a person suffers personal injury shall be deemed (*l*), in relation to him, to be an industrial accident if—

- (a) it arises out of and in the course of his employment (*m*);
- (b) that employment is insurable employment (*n*); and
- (c) payment of benefit is not, under the provisions of Part II of this Act, precluded because the accident happened while he was outside Great Britain (*o*);

and references in the following provisions of this Act to an industrial accident shall be construed accordingly (*p*).

#### NOTES

**General effect of section.**—This section provides for the making, in every case where it is determined that the relevant accident was or was not an "industrial accident" as defined in subsection (5), of a declaration to that effect. A claimant has the right to have this question determined, apart from the fate of his claim for benefit on other grounds, and even if no claim for benefit is made. This right is, however, subject to the insurance officer, local appeal tribunal or Commissioner refusing to determine the question if satisfied that it is unlikely that it will be necessary to determine it for the purposes of any claim for benefit. The right of refusal, therefore, does much to cut down the right to a declaration, even though the refusal is subject to appeal. The declaration, when made, is conclusive with regard to that accident.

The section gives amplified statutory form to the practice which grew up under the Workmen's Compensation Acts, of making a "declaration of liability", formerly a "suspensory award", in cases where there had been injury arising out of and in the course of his employment, but where there was at the moment no incapacity, though a reasonable probability of it. See *King v. P. L. A.*, [1920] A.C., at p. 12; 12 B.W.C.C., at p. 265, *per* Lord BIRKENHEAD, L.C.; 34 Digest 434, 3548; *Cole v. United Dairies, Ltd.*, [1941] 1 K.B. 100; [1940] 4 All E.R. 318; 33 B.W.C.C. 332; and *Allen v. Tinsley Park Collieries, Ltd.* (1944), 37 B.W.C.C. 28, *per* Lord GREENE, M.R., at p. 31. See, generally, Willis 335 *et seq.*

(a) **Claim for benefit.**—By section 88 (1) this includes an application for a declaration under this section. "Benefit" means benefit under this Act (*ibid.*).

(b) **Relevant accident.**—This, in relation to any benefit, means the accident in respect of which that benefit is claimed or payable (section 88 (1), *post*).

(c) **Industrial accident.**—This is defined by subsection (5).

(d) **Express declaration.**—This will be in writing and recorded under subsection (2). See also General Note, *supra*.

(e) **Right to determination of question.**—This is subject to the right of refusal given by subsection (3). "Claimant" means a person claiming benefit and includes an applicant for a declaration under this section (section 88 (1), *post*). A claim may be disallowed, for example, under section 32 (2), *ante*.

(f) **Personal injury by accident.**—See sections 1 and 7, *ante*, and section 55 (relating to industrial diseases), *post*.

(g) **Right to a declaration.**—This is also subject to the right of refusal given by subsection (3). This Part of this Act (Part III) relates to the determination of questions and claims and comprises sections 36–54. As to claim for benefit, see section 88 (1), *post*. There may be another claim made, which does not involve this question.

(h) **Insurance officer, local appeal tribunal or Commissioner.**—As to these, and their powers, see sections 42–48, *ante*, and 50 and 51, *post*.

(i) **Grounds for refusal.**—A complete discretion is given, subject to appeal under sections 46 or 47, *ante*. Refusal would be justified, for example, in a case where it is clear on medical evidence that there is not and never will be any injury.

(k) **Declaration to be conclusive.**—It will amount to a finding, binding on any person claiming benefit in respect of the accident, that the accident was or was not an "industrial accident" as defined in subsection (5). "Claimant" in this subsection means a person claiming benefit, whether or not he be the person at whose instance the declaration was made. The provisions of this Part of this Act, relating to appeal and review are sections 46 and 47, *ante*, sections 37 and 40, *ante*, and section 50, *post*.

(l) **Deemed.**—See note (*s*) to section 7, *ante*.



(m) **Arises out of and in the course of his employment.**—This expression is taken from section 1 of the Workmen's Compensation Act, 1925; Willis 6; and is discussed in note (g) to section 1, *ante*, and note (e) to section 7, *ante*. See also the authorities collected in Willis, at pp. 20–150.

(n) **Insurable employment.**—As to this, see section 1, *ante*, and the First Schedule, *post*.

(o) **Accident happening outside Great Britain.**—As to this, see section 7 (3), *ante*, and section 77, *post*.

(p) **Following provisions of this Act.**—This refers to sections 50, 81 and 88 (1), *post*.

**50. Review of decisions of insurance officer, local appeal tribunal or Commissioner.**—(1) Any decision under this Act of an insurance officer, a local appeal tribunal or the Commissioner (a) may be reviewed at any time by an insurance officer or, on a reference from an insurance officer (b), by a local appeal tribunal, if—

- (a) he or they is or are satisfied by fresh evidence that the decision was given in ignorance of, or was based on a mistake as to, some material fact (c); or
- (b) there has been any relevant change of circumstances since the decision was given (d); or
- (c) the decision was based on the decision of a special question and the decision of the special question is revised under this Part of this Act or the Family Allowances Act, 1945 (e):

Provided that a decision that an accident was not an industrial accident shall not be subject to review, and a decision that an accident was an industrial accident shall only be subject to review where the insurance officer or local appeal tribunal, as the case may be, is or are satisfied by fresh evidence that the decision was given in consequence of any wilful non-disclosure or misrepresentation of a material fact (f).

(2) Any decision given on a review under this section, and any refusal to review a decision under this section, shall be subject to appeal in like manner as an original decision (g).

#### NOTES

**General effect of section.**—This section gives the insurance officer power to review the decisions of an insurance officer or local appeal tribunal or the Commissioner if satisfied by fresh evidence that there was ignorance or mistake of some material fact, or if there has been a change of circumstances or if a "special question" decisive of the case has since been revised. The power of review of decisions as to "industrial accidents" is limited to decisions that there was such an accident, which were obtained by wilful non-disclosure or misrepresentation of a material fact. Decisions given on review, or refusals to review, are subject to appeal.

This section is modelled on section 46 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 527.

Other sections give a power of review. Section 37, *ante*, gives the Minister power to review his decisions on certain questions if new facts are brought to his notice. Section 40, *ante*, gives a medical board power to review the decisions of a medical board or medical appeal tribunal.

The section is intended to provide for review in cases in which there would otherwise be discontent arising from the decision, and especially cases of industrial diseases where the signs or symptoms might not be present on the particular day of the medical examination. It is particularly desirable to give such a right to insured persons who will not be legally represented. Most of the reviews will be at the instance of insured persons rather than of the insurance officer.

Section 11 of the Workmen's Compensation Act, 1925; Willis 365; provided for the review of weekly payments at the request either of the employer or workman.

(a) **Decision of insurance officer, local appeal tribunal or Commissioner.** These are given under sections 45–49, *ante*. As to the appointment and constitution of these tribunals, see sections 42–44, *ante*.

(b) **Reference from insurance officer.**—This is under section 45 (3) (b) (i), *ante*.

(c) **Ignorance or mistake of fact.**—The ignorance or mistake must presumably be that of the tribunal giving the decision. The element of fraud only enters into the proviso. Note that the ignorance or mistake must be of fact, and a material fact, and not of law, as to which, see note (c) to section 40, *ante*. As to "fresh evidence", see note (b) to that section.



(d) **Relevant change of circumstances.**—This is of course a question of fact in each case. It was decided in cases dealing with review under section 11 of the Workmen's Compensation Act, 1925; Willis 365; that an application to review could not be entertained unless there had been a change in the circumstances of the case since the weekly payments were awarded, though this did not apply to cases under section 9 (4); Willis 261 and 334. What amounted to a change in the circumstances is dealt with in the authorities set out in Willis 369 *et seq.* The expression, first used in *Crossfield v. Tanian*, [1900] 2 Q.B. 629; 2 W.C.C. 141; 34 Digest 453, 3721; was very wide and covered anything from a change in the medical opinion of a man's condition to a change in the conditions of the labour market: See, generally, *Ramsay v. The Gramophone Co.*, [1936] 2 All E.R. 752; 29 B.W.C.C. 137; Digest Supp. The same wide construction will presumably be given to the expression as used, no doubt intentionally, in this section. "Relevant" here means material to the case. It is also used in a number of expressions in this Act with special meanings, defined in sections 81 (2) and 88 (1), *post.* As to when the decision can be said to be given, see notes (l) and (m) to section 47, *ante.* See also section 25 (1) (c), *ante.*, where "change of circumstances" also occurs.

(e) **Revision of decision of special question.**—As to "special questions", see section 36 (1), *ante.* They relate to insurable employment, contributions, entitlement to increased benefit in respect of constant attendance (section 15, *ante.*), persons affected by the Fourth Schedule, *post.*, and "children" within the meaning of the Act, and include the "disablement questions". Section 36, *ante.*, provides for the determination of these questions. The revision of certain of them by the Minister on new facts being brought to his notice is also provided for by section 37 (6), *ante.* Disablement questions may be reviewed under section 40, *ante.* Revision under the Family Allowances Act, 1945, is provided for by section 5 (3) of that Act; 32 Statutes Supp. 77.

(f) **Limited power to review decisions as to industrial accidents.**—These decisions are given under section 49, *ante.* As to "satisfied by fresh evidence", see note (b) to section 40, *ante.* As to non-disclosure or misrepresentation of a material fact, see note (c) to that section. In this section the word "wilful" is used, introducing the element of fraud, and it is therefore desirable that the insurance officer or local appeal tribunal should not allow a review under this proviso unless satisfied beyond all reasonable doubt of the fraud, for to allow it will involve an accusation of crime (section 67 (1) (c), *post.*). As to "wilful", see note (p) to section 32, *ante.*

(g) **Appeal from decision on review or refusal to review.**—Appeals from original decisions are governed by sections 46 and 47, *ante.*

### *General provisions as to determination of claims and questions*

#### **51. Procedure, evidence, etc.**—(1) Regulations may provide (a)—

- (a) for prescribing the procedure to be followed and the form of any document required in connection with the consideration and determination of claims and questions by the Minister, an insurance tribunal and insurance officers or in connection with the withdrawal of a claim (b);
- (b) for authorising any insurance tribunal consisting of two or more members to proceed with any case, with the consent of the claimant, in the absence of any member (c);
- (c) for giving the chairman or acting chairman of an insurance tribunal consisting of two or more members a second or casting vote where the number of members present is an even number (d);
- (d) for extending and defining the functions of assessors for the purposes of this Part of this Act (e);
- (e) for prescribing the evidence to be required in connection with the determination of a claim or of any question arising in connection with a claim or an award (f);
- (f) for requiring or authorising the Minister to hold, or to appoint a person to hold, an inquiry in connection with the consideration of any question by the Minister (g);
- (g) for empowering the Minister, an insurance tribunal or an insurance officer to refer to a medical practitioner for examination and report any question arising for his or their decision (h);
- (h) for empowering the prescribed person by summons to require persons to attend and give evidence or produce documents on the consideration of any claim or question by an insurance tribunal



or at any inquiry held by virtue of regulations under this subsection (i) ;

- (j) for prescribing the manner in which and the time within which any question may be raised with a view to its decision by the Minister under this Part of this Act, or with a view to the review of any decision under this Part of this Act (k).

(2) At any inquiry held by virtue of regulations under the foregoing subsection, the witnesses shall, if the person holding the inquiry thinks fit, be examined on oath, and the person holding the inquiry shall have power to administer oaths for the purpose (l).

(3) Regulations under subsection (1) of this section prescribing the procedure to be followed in cases before a local appeal tribunal or the Commissioner shall provide that any hearing shall be in public except in so far as the tribunal or Commissioner for special reasons otherwise directs, and it is hereby declared that the power to prescribe procedure includes power to make provision as to the representation of one person, at any hearing of a case, by another person whether having professional qualifications or not (m).

(4) The Arbitration Acts, 1889 to 1934, shall not apply to any proceedings under this Part of this Act, except so far as they may be applied by regulations (n).

(5) In this section the expression "insurance tribunal" means the Commissioner, a local appeal tribunal, a medical appeal tribunal, a medical board or a single medical practitioner acting in place of a medical board (o).

#### NOTES

**General effect of section.**—This section empowers the making of regulations covering many matters of procedure, evidence etc. in connection with the work of the Minister and "insurance tribunals", a general expression covering the various tribunals set up by this Part of the Act.

Similar powers were given by sections 48 and 90 of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 528, 554 ; the latter as amended by S.R. & O. 1945 No. 317 ; by sections 163 (4) and 178 of the National Health Insurance Act, 1936 ; 29 Halsbury's Statutes 1169, 1176 ; as amended by S.R. & O. 1945 No. 316 ; and by section 32 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 ; 29 Halsbury's Statutes 1225. The National Insurance Act, 1946, section 43 (5), does not go into details, but empowers regulations to provide for the procedure to be followed on claims and appeals, and that subsection was similarly amended in the House of Lords to give the right of audience to professional or non-professional advocates. In this section the amendment was added to subsection (3) in the House of Lords.

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(b) **Procedure as to claims and questions.**—These are considered and determined under this part of this Act. "Claim" means a claim for benefit, and here includes (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *ante*) ; and (b) in relation to the review of an award or decision, a claim by a beneficiary under the award or decision (section 88 (1), *post*). "Questions" are classified by and determined under section 36, *ante*. "The Minister" means the Minister of National Insurance (section 88 (1), *post*). As to "insurance tribunals", see subsection (4). As to insurance officers, see sections 44–50, *ante*. Cf. generally, the Unemployment Insurance (Courts of Referees) Regulations, 1936 (S.R. & O. 1936 No. 334), made under the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 499.

(c) **Absence of member of tribunal.**—Cf. S.R. & O. 1936 No. 334, *supra*, Regulation 4.

(d) **Casting vote.**—See note (c), *supra*.

(e) **Assessors.**—These are provided for by sections 42 (2) (b) and 43 (2), *ante*.

(f) **Evidence.**—The rules of evidence as applied in courts of law will almost certainly be greatly relaxed in proceedings under this Act. As to "award", see note (d) to section 45, *ante*. "Prescribing" means prescribing by regulations (section 88 (1), *post*).

(g) **Inquiry by Minister.**—Questions for consideration under this paragraph



would appear to relate to the operation and administration of the Act, the making or alteration of regulations, etc., rather than to those questions determined by the Minister under section 36, *ante*.

(h) **Reference to medical practitioner for examination and report.**—“Medical practitioner” means a registered medical practitioner (section 88 (1), *post*), that is, any person for the time being registered under the Medical Acts (Medical Act, 1886, section 27; 11 Halsbury's Statutes 725). See also note (c) to section 38, *ante*. This procedure is similar to that provided by Schedule I (11) of the Workmen's Compensation Act, 1925; Willis 715. The procedure of inquiry and report is also found, among other places, in county court procedure; see County Courts Act, 1934, section 90; 27 Halsbury's Statutes 133; County Court Practice, 1946, 112; County Court Rules, 1936, Ord. 19; County Court Practice, 1946, 362. In this section, however, it is limited to medical matters. As to insurance tribunals, see subsection (4).

(i) **Attendance of witnesses.**—The “prescribed person” means a person prescribed by regulations (section 88 (1), *post*). The procedure will no doubt be adapted from the practice of the courts as to subpoena *ad testificandum* and *duces tecum* and witness summonses, as to which, see 13 Halsbury's Laws (2nd Edn.) 733–739, and County Court Practice, 1946, 371 (Ord. 20, Rule 8). See also the Workmen's Compensation Act, 1925, Schedule I, 6 (b); Willis 703; which gave like powers in arbitrations under the Act.

In the application of this Act to Scotland this paragraph shall have effect as if for any reference to a summons there were substituted a reference to an order (section 90 (e), *post*).

(k) **Decision of questions by Minister, and reviews.**—Questions are decided by the Minister under section 36 (1), *ante*. Reviews are under sections 37, 40 or 50, *ante*.

(l) **Oaths of witnesses.**—This subsection refers only to inquiries under subsection (1) (f), *supra*. As to oaths, see generally, 13 Halsbury's Laws (2nd Edn.) 748; County Court Practice, 1946, 955, 365.

(m) **Public hearings: right of audience.**—This subsection was added on the Report Stage as a result of representations made in Committee. Regulations may provide for public hearings before local appeal tribunals or the Commissioner unless the tribunal or Commissioner directs a hearing *in camera*. The decision is left entirely to the tribunal or Commissioner, who will have regard to the nature of the case and, particularly, the wishes of the insured person. The second part of this subsection was added on the Report Stage in the House of Lords and is merely declaratory of the regulation-making power which already exists. So much was said during the passage of the Bill through Parliament as to the right of audience of advocates that this provision was put in to make it clear that regulations can provide for this right. It need not be limited to professional advocates, which will allow friends or relatives, as well as trade union or friendly society officials to be given the right of audience.

(n) **Arbitration Acts, 1889 to 1934.**—As to what Acts this expression includes, see section 21 (4) of the Arbitration Act, 1934; 27 Halsbury's Statutes 37. As to arbitrations generally, see 1 Halsbury's Laws (2nd Edn.) 619 *et seq.* But for this provision it might be possible to appeal to the High Court as from an arbitrator, thereby frustrating the intention of the Act.

(o) **Meaning of “insurance tribunal.”**—As to the Commissioner, see section 42, *ante*. As to local appeal tribunals, see section 43, *ante*. As to medical appeal tribunals and medical boards, see section 38, *ante*. As to single medical practitioners sitting in place of medical boards, see section 41, *ante*.

**52. Interim payments, arrears and repayments.**—(1) The Minister (a) may make regulations (b) with respect to the payment of benefit (c) during any period intervening between any application for the determination of a claim for benefit or any question arising in connection with such a claim or with an award (d) and the final determination of the claim or question (e):

Provided that, except in the case of a gratuity (f), benefit shall be payable in accordance with an award, notwithstanding that an appeal against the award is pending (g), and, subject to the following provisions of this section, shall be treated as having been duly paid and shall not be recoverable under the provisions of this Act or otherwise (h).

(2) Where by a decision on review or appeal (i) a person entitled to benefit (k) is awarded—

- (a) a pension in lieu of a gratuity or allowance previously awarded; or
- (b) a gratuity in lieu of a pension or allowance previously awarded; or
- (c) an allowance in lieu of a pension or gratuity previously awarded (l);

the decision on the review or appeal shall, subject to and in accordance with regulations, direct that any payments already made on account of the benefit



originally awarded shall be treated as having been made on account of the benefit awarded by the decision on review or appeal (*m*).

(3) Where on review a decision under this Part of this Act is revised so as to make benefit by way of a pension or allowance payable, or to increase the rate of such benefit, then, subject to the provisions of this section, benefit shall be payable accordingly for the period from the date of the application for the review or from such earlier date as may be prescribed (*n*).

(4) Where on review or appeal a decision under this Part of this Act is revised, or is reversed or varied, the decision given on the review or appeal shall require repayment to the Industrial Injuries Fund of any benefit paid in pursuance of the original decision to the extent to which it—

- (a) would not have been payable if the decision on the review or appeal had been given in the first instance ; and
- (b) is not directed to be treated as paid on account of the benefit awarded by the decision on review or appeal (*o*) :

Provided that repayment shall not be required in any case where the beneficiary (*p*) is shown to the satisfaction of the person or tribunal determining the review or appeal to have acted in good faith in all respects as to the obtaining and receipt of the benefit (*q*).

(5) Where—

- (a) on appeal against an award of benefit by way of a pension or allowance, a decision under this Part of this Act is reversed or varied, so that such benefit is not payable or is payable at a less rate ; and
- (b) on review, the decision on that appeal is revised so as to make such benefit payable or payable at a higher rate from a date before the decision on appeal (*r*) ;

any benefit paid in pursuance of the award before the decision on appeal shall, to the extent to which it would not have been payable if the decision on appeal had been given in the first instance, be treated as having been paid on account of any benefit made payable for the same period by the decision on review, except in so far as it has, in pursuance of the decision on appeal, been repaid or treated as paid on account of the benefit awarded by that decision (*s*).

(6) Regulations may provide (without prejudice to any other method of recovery) for the deduction of any benefit required to be repaid by reason of a decision given on an appeal or review under this Part of this Act from any benefit then or thereafter payable to the person by whom it is to be repaid or any persons entitled to receive his benefit on his death (*t*).

(7) Where a person has received sums on account of an allowance under the Family Allowances Act, 1945, to which by virtue of this Act he was not entitled by reason of his being entitled to death benefit under section twenty-one thereof subsequently awarded (whether in respect of the same or a different child), those sums shall be treated as paid on account of the death benefit and the amount thereof shall be repaid to the Treasury out of the Industrial Injuries Fund (*u*).

(8) Where it has been decided by the Minister that contributions under this Act are not payable or are payable at a rate less than the maximum in respect of any person or any class of persons (*v*), and that decision is subsequently revised so as to make contributions payable, or payable at a higher rate, in respect of that person or that class of persons, contributions shall be so payable only as from the date on which the decision was so revised (*w*).

#### NOTES

**General effect of section.**—This section gives power to make regulations as to the payment of benefit while proceedings on a claim, or on an appeal (except in the case of a gratuity), are pending. It also provides for the payment of increased benefit under a decision on review, for the repayment of benefit where the review reduces the rate of benefit (except where benefit was obtained and received by the beneficiary in



good faith), and for treating benefit already paid as having been paid on account, where there is an appeal which is later reviewed in the beneficiary's favour, instead of requiring its repayment. Regulations may also provide for the deduction of overpaid benefit from future payments. The section also provides for cases where the rate of contributions is revised.

Subsection (7) was added in the House of Lords in Committee, and enables, in cases where it is found that a family allowance has been paid for a child and that child was entitled to a higher benefit by way of death benefit, the amount of the family allowance to be repaid to the Treasury out of the Industrial Injuries Fund.

Section 49 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 528; was in similar terms (though much shorter).

Section 47 of the National Insurance Act, 1946, deals with interim payments, arrears and repayments, though mostly in different language. Section 47 (3) corresponds with subsection (7) of this section.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*; section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(c) **Benefit.**—See note (h), *infra*.

(d) **Application for determination of claim for benefit or any question.**—The application is made when the claim or question is submitted to the insurance officer under section 45 (1), *ante*. As to questions, see section 36, *ante*. As to "award", see note (d) to section 45, *ante*.

(e) **Final determination of claim or question.**—This means a decision which is not appealed against within the prescribed time.

(f) **Gratuity.**—Gratuities are payable under section 12 (6), *ante* (disablement assessed at less than 20 per cent.), section 19 (2) (b), *ante* (widow remarrying), section 22 (3), *ante* (parents) and section 23 (3), *ante* (relatives).

(g) **Appeal pending against award.**—Under section 46 or 47, *ante*.

(h) **Not recoverable under the provisions of this Act or otherwise.**—This refers to the later subsections of this section, to section 70, *post*, and to common law actions for "money had and received by the defendant to the plaintiff's use".

(i) **Decision on review or appeal.**—See sections 37, 40, 46, 47 and 50, *ante*.

(k) **Benefit.**—This, by section 88 (1), *post*, means benefit under this Act. This provision was originally confined to death benefit (see sections 19–24, *ante*) but was amended in the House of Lords to include all benefits, so that a disabled person can have benefit paid on account of one form of benefit treated as having been paid on account of another form which is substituted on appeal or review, e.g., a pension in place of a gratuity.

(l) **Pension, gratuity or allowance.**—These are awarded, as death benefit, under sections 19–24, *ante*. As to disablement pension, see section 12, *ante*.

(m) **Payments to be treated as made on account.**—This subsection was added on the Report Stage in consequence of the amendments to the death benefit provisions, introducing gratuities for parents (section 22, *ante*) and relatives (section 23, *ante*). Note that the decision on review or appeal "shall", not "may", direct that payments are to be treated as paid on account.

(n) **Benefit to run from date of application for review.**—This will be prescribed and will presumably be the date on which the appropriate form of application is filled up, whether under section 37, 40 or 50, *ante*. Pensions and allowances are payable under sections 12–24, *ante*. "Prescribed" means prescribed by regulations (section 88 (1), *post*).

(o) **Repayment of benefit to Industrial Injuries Fund.**—This Fund is established under section 58, *post*. As to treating benefit as paid on account, see subsection (2), relating to death benefit. Note that condition (b) is additional to condition (a).

(p) **Beneficiary.**—This, in relation to any benefit, means the person entitled to that benefit (section 88 (1), *post*).

(q) **Person or tribunal determining review or appeal to be satisfied of beneficiary's good faith.**—This may be the Minister (section 37, *ante*), the medical board (section 40, *ante*), the local appeal tribunal (section 46, *ante*), the Commissioner (section 47, *ante*), or the insurance officer or local appeal tribunal (section 50, *ante*). As to "to the satisfaction of", it should not be for the beneficiary to prove his good faith, but for whoever alleges bad faith to prove it. Any practice to the contrary would be against the established principles of English law. See also note (b) to section 40, *ante*. A thing is deemed to be done in good faith when it is in fact done honestly,



whether it be done negligently or not (Bills of Exchange Act, 1882, section 90; 2 Halsbury's Statutes 79; Sale of Goods Act, 1893, section 62 (2); 17 Halsbury's Statutes 643).

(r) **Date before the decision on appeal.**—The decision on appeal will presumably date from the day on which it was in fact given by the tribunal, unless the formal decision is for some reason not drawn up until later and bears a later date. It should bear the date on which the decision was in fact given. Note that condition (b) is additional to condition (a).

(s) **Benefit to be treated as paid on account.**—This subsection must be read with subsection (3); it prevents a beneficiary from having to repay benefit already received, if a decision on appeal reduces benefit but does not require repayment of the excess and that decision is later reviewed and the original decision restored in whole or in part. The excess benefit paid under the original decision during the period pending the decision on appeal which reduced the rate is to be treated as paid on account of benefit payable at the rate finally fixed on the review, except in so far as it has already been repaid or treated as paid on account under the decision on appeal. The exception was added on the Report Stage.

(t) **Deduction of overpaid benefit.**—No regulations have been made under this section at the time of going to press. "Any other method of recovery" apparently refers to the earlier subsections of this section. Persons entitled to receive benefit on the death of the beneficiary are those entitled to death benefit under sections 19–24, *ante*. Personal representatives, that is executors or administrators, will only be entitled to receive benefit due to a deceased beneficiary before his death, but unpaid. Cf. the Second Schedule, Part III (2) (b), *post*.

(u) **Family allowance to be taken into account.**—This subsection was added in Committee in the House of Lords. It enables a family allowance to be continued to be paid and, later, a higher claim to be admitted under this Act. If the higher claim overlaps the family allowance, an adjustment can be made between the two. If a man dies, and his family is dispersed, one child being taken into a household where the father gets a family allowance under the Family Allowances Act, 1945; 32 Statutes Supp. 75; and later death benefit is awarded in respect of the deceased's death in favour of the child under section 21, *ante*, and is paid to the father or mother in that household, the sums already paid under the Family Allowances Act are treated as payment of the arrears of death benefit due from the date of the death to the date of the award. This provision brings this Act into conformity with the National Insurance Act, 1946, section 47 (3), which contains a similar provision relating to a guardian's allowance (see section 19 of that Act). As to the Industrial Injuries Fund, see section 58, *post*.

(v) **Decision of Minister as to rate of contributions.**—As to this, see section 36 (1) (a) (iv), *ante*.

(w) **Date of revision of decision.**—The date will presumably be the date shown on the formal notification by the Minister of his decision.

**53. Remuneration and expenses.**—(1) The Minister (a) shall pay to the Commissioner and any deputy Commissioner (b) such salary or other remuneration as the Treasury may determine, and such expenses incurred in connection with the work of the Commissioner as may be so determined (c).

(2) The Minister may pay—

(a) to insurance officers (d), such salaries or other remuneration;

(b) to—

(i) persons appointed to sit as assessors with the Commissioner (e);

(ii) the chairman and other members of local appeal tribunals, medical boards and medical appeal tribunals (f);

(iii) medical practitioners sitting as assessors with a local appeal tribunal (g);

(iv) medical practitioners appointed to act instead of a medical board (h);

such remuneration and such travelling and other allowances;

(c) to persons required to attend—

(i) on the consideration of a case before the Commissioner or before any such tribunal or board or before a medical practitioner acting in place of a medical board (i);

(ii) at any inquiry held by virtue of regulations under this Part of this Act (k);



(iii) at proceedings on any reference under this Part of this Act to referees appointed under the Family Allowances Act, 1945 (*l*) ;

such travelling and other allowances ;

(d) such other expenses incurred in connection with the work of any such tribunal or board or any medical practitioner acting in place of a medical board or in connection with any such inquiry or proceedings ;

as the Minister with the consent of the Treasury may determine.

(3) In this section references to travelling and other allowances include references to compensation for loss of remunerative time :

Provided that such compensation shall not be paid to any person in respect of any time during which he is in receipt of remuneration under this section (*m*).

#### NOTES

**General effect of section.**—This section empowers the Minister, with Treasury approval, to pay the various officers and members of tribunals their salaries or other remuneration and also to pay travelling and other allowances to persons required to attend hearings and inquiries, for example, as witnesses. No person who receives remuneration, however, is entitled to compensation for loss of remunerative time in respect of the same attendance. Similar provisions were contained in the Unemployment Insurance Act, 1935, but not all in one section. They were to be found in sections 40, 41, 42 and 47 ; 28 Halsbury's Statutes 524, 525 and 527. Cf. also section 5 (6) of the Family Allowances Act, 1945 ; 32 Statutes Supp. 77. See also section 56 (4), *post*. If the practice under the Unemployment Insurance Act is followed, the Commissioner and insurance officers will be paid a salary, while the deputy Commissioners, chairmen and members of tribunals, and assessors will be paid fees for each sitting.

The corresponding section of the National Insurance Act, 1946, is section 44.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **The Commissioner and any deputy Commissioner.**—These are appointed under section 42, *ante*.

(c) **Salary and expenses to be determined by Treasury.**—This will be arranged between the Minister and the Treasury by inter-departmental communication. Expenses will presumably include such things as office expenses and wages of clerical staff, unless these are paid direct by the Minister, and travelling expenses if the Commissioner has at any time to sit away from his usual office.

(d) **Insurance officers.**—These are appointed under section 44, *ante*.

(e) **Assessors with Commissioner.**—These are appointed under section 42 (2) (b), *ante*.

(f) **Local appeal tribunals, medical boards and medical appeal tribunals.**—These are constituted under sections 43 and 38, *ante*, respectively.

(g) **Medical assessors with local appeal tribunal.**—These are appointed under section 43 (2), *ante*.

(h) **Medical practitioners acting instead of medical board.**—These are appointed under section 41 (1), *ante*.

(i) **Persons required to attend before tribunals, etc.**—As to the summoning of such persons, see section 51 (h), *ante*. As to hearings before the Commissioner, see section 47, *ante* ; before tribunals, etc., see sections 39–46 and 48–50, *ante*.

(k) **Inquiries.**—These may be held under regulations made pursuant to section 51 (f), *ante*.

(l) **Reference to referees under Family Allowances Act, 1945.**—See section 36 (1) (b), *ante*, and section 5 of the Family Allowances Act, 1945 ; 32 Statutes Supp. 77.

(m) **Remunerative time.**—This means time during which the person would otherwise have been earning money, though this does not apply to persons who are paid remuneration as distinct from or as well as allowances, for example, barristers or solicitors who sit as chairmen of local appeal tribunals and who thereby lose time which is, or might be, remunerative in court or in their chambers or offices.

**54. Superannuation allowance for Commissioner and deputy Commissioners.**—(1) The Minister (*a*) may from time to time recommend to the Treasury that there shall be paid to the Commissioner or any deputy Commissioner (*b*) an annual sum by way of superannuation allowance (*c*) calculated in accordance with the Fifth Schedule to this Act (*d*) if either—



- (a) he is at the time of his retirement over the age of seventy-two or, where he retires after fifteen years' service, the age of sixty-five (e) ; or
- (b) the Minister is satisfied by means of a medical certificate that at the time of his retirement he is, by reason of infirmity of mind or body, incapable of discharging the duties of his office and that the incapacity is likely to be permanent (f).
- (2) For the purposes of the foregoing subsection and the said Schedule—
  - (a) service as Commissioner or deputy Commissioner which is not remunerated by means of a salary shall be disregarded ;
  - (b) service as deputy Commissioner shall, subject to the foregoing paragraph, count (in the case of a person retiring as Commissioner) as service as Commissioner ;
  - (c) the Treasury may by regulations provide for counting as service as Commissioner or as deputy Commissioner pensionable service in any other capacity under the Crown (g).
- (3) The decision of the Treasury shall be final (h) on any question arising as to—
  - (a) the amount of any superannuation allowance under this section ; or
  - (b) the reckoning of any service for the purpose of calculating such an allowance.
- (4) Where the rate of a Commissioner or deputy Commissioner's superannuation allowance under this section is increased by virtue of regulations made under paragraph (c) of subsection (2) thereof in respect of service in some other capacity, the allowance shall be paid and borne partly in the manner provided by subsections (1) and (2) of the section of this Act relating to the expenses of Government departments (i) and partly in the manner in which a pension payable wholly in respect of service in that other capacity would have been paid and borne (k), in such proportions as may be determined by the Treasury regard being had to the relative length of service and rate of remuneration in each capacity.
- (5) In this section the expression " pension " includes any superannuation or other retiring allowance or gratuity and the expression " pensionable " shall be construed accordingly (l).

#### NOTES

**General effect of section.**—This section was added in Committee in the House of Lords, to give the Commissioner and his deputies the same rights as regards superannuation allowance as are given under the National Insurance Act, 1946, section 45, which is in practically the same terms.

With subsection (1) compare section 14 of the Supreme Court of Judicature (Consolidation) Act, 1925 ; 4 Halsbury's Statutes 151 ; which deals with Judges' pensions and is in somewhat similar terms. Compare also section 9 of the County Courts Act, 1934 ; 27 Halsbury's Statutes 96 ; County Court Practice, 1946, 25 ; as to judges of county courts.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **The Commissioner or any deputy Commissioner.**—As to these, see section 42, *ante*.

(c) **By way of superannuation allowance.**—This means under the Superannuation Acts, 1834 to 1946, as to which, see note (e) to section 60, *post*.

(d) **Calculated in accordance with Fifth Schedule.**—For this Schedule, see *post*. It provides for an allowance calculated in thirtieths of the salary and increasing with every year's service up to 15. It corresponds with the Sixth Schedule of the National Insurance Act, 1946.

(e) **Age of retirement.**—The rules as to proof of age laid down in section 63, *post*, do not apply here, though the rules as to attaining an age laid down in section 88 (5), *post*, do apply. " Retirement " is used in the ordinary sense of ceasing regular work. Retirement pensions will also be payable, subject to the statutory conditions, under sections 20 and 21 of the National Insurance Act, 1946. The age is the same as that fixed by the County Courts Act, 1934, section 7 (2) ; 27 Halsbury's Statutes 95 ; County Court Practice, 1946, 25.

(f) **Medical certificate on retirement under age.**—The medical certificate



will presumably be one given by the Commissioner's own doctor. As to "infirmity", see note (u) to section 35, *ante*.

(g) **Service to be counted towards superannuation allowance.**—This subsection lays down what service may and what may not be counted. Service not remunerated by salary refers to service remunerated in some other way, e.g. by fees. See section 53 (2) (a), *ante*.

Note that under this section the regulations are to be made by the Treasury, and not by the Minister. They still, however, come under sections 86 and 87, *post*, and no doubt they will be submitted to him for his approval. As to "pensionable", see subsection (5).

(h) **Final.**—This means that there is no appeal to any court. Note that under subsection (1) the Minister can only recommend the payment of an allowance.

(i) **Section of Act relating to expenses of Government departments.**—This is section 60, *post*, which provides for their repayment out of the Industrial Injuries Fund to the Treasury.

(k) **Manner in which pension for other service would have been paid and borne.**—This will depend upon the particular enactment governing the pension for that kind of service. As to pension for service in the armed forces, see Royal Warrant of April, 1946 (Cmd. 6799). As to the pensions of High Court Judges, see section 14 of the Supreme Court of Judicature (Consolidation) Act, 1925; 4 Halsbury's Statutes 151. As to judges of county courts, see section 9 of the County Courts Act, 1934; 27 Halsbury's Statutes 96; County Court Practice, 1946, 25. As to "pension", see subsection (5).

(l) **Meaning of "pension" and "pensionable".**—As to superannuation or other retiring allowances or gratuities, see note (e) to section 60, *post*. Cf. "pension" as used in Part II of this Act, *ante*, and in Part II of the National Insurance Act, 1946.

#### PART IV

##### EXTENSION OF INSURANCE TO DISEASES ETC.

**55. Industrial diseases, and industrial injuries not caused by accident.**—(1) Subject to the provisions of this Part of this Act (a), a person who is under this Act insured against personal injury caused by accident arising out of and in the course of his employment (b) shall be insured also against any prescribed disease and against any prescribed personal injury not so caused, being a disease or injury due to the nature of that employment and developed on or after the appointed day (c).

(2) A disease or injury may be prescribed for the purposes of this Part of this Act in relation to any insured persons, if the Minister (d) is satisfied (e) that—

- (a) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons (f); and
- (b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty (g).

(3) Regulations prescribing any disease or injury for the purposes of this Part of this Act may provide that a person who developed the disease or injury on or at any time after a date specified in the regulations, being a date before the regulations came into force but not before the appointed day, shall be treated for the purposes of this Part of this Act, subject to any prescribed modifications, as if the regulations had been in force when he developed the disease or injury (h).

(4) Provision may be made by regulations for determining the time at which a person is to be treated for the purposes of this Act as having developed any disease or injury prescribed for the purposes of this Part of this Act, and the circumstances in which any such disease or injury is, where the person in question has previously suffered therefrom, to be treated as having recrudesced or as having been contracted or received afresh (i).

(5) Nothing in this Part of this Act shall affect the right of any person to benefit in respect of a disease which is a personal injury by accident within the meaning of this Act, except that a person shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in



the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment (*k*).

# NOTES

**General effect of section.**—This section, together with sections 56 and 57, *post*, form Part IV of the Act and deal with "industrial diseases", etc. The Minister is empowered to prescribe by regulations any disease or injury due to the nature of the insured person's employment, which is either a risk of a particular occupation, not common to all persons, or one which can with reasonable certainty be attributed in particular cases to the nature of the employment. He is further empowered to provide retrospectively, for persons who have already developed a disease, before the "appointed day" when the Act comes into force, and to determine, with regard to particular diseases or injuries, when they have been developed or have recrudesced or been contracted or received afresh. Rights to benefit under the earlier sections are left unaffected, save that no person may have benefit in respect of a prescribed occupational disease as such and also as an injury by accident arising out of and in the course of his employment under section 7, *ante*.

The powers given to the Minister under this Part of the Act are wider than those given to the Home Secretary under sections 43-46 of the Workmen's Compensation Act, 1925; Willis 581-586. It has been found that the tests applied to diseases under that procedure were tending to become too rigid, and that the procedure was too slow. There were less than 50 diseases listed under the Workmen's Compensation Acts, and there are said to be some 2,000 diseases to-day which can to some extent be attributed to a person's occupation. The old Schedule (i.e., Schedule III to the Workmen's Compensation Act, 1925, and the various Orders issued by the Home Secretary under section 43 (3) of that Act; Willis 719 *et seq.*) will be replaced by a new list of prescribed diseases, which will include those prescribed under that Act. An additional disease was added to those scheduled under the Workmen's Compensation Act by S.R. & O. 1946 No. 349, which extended section 43 of that Act to inflammation of the skin caused by radiant energy other than X-rays, radium, or other radio-active substance, with effect from April 1st, 1946.

The making up of the schedule of industrial diseases is likely to become increasingly difficult, largely due to the increased incidence of neurotic diseases caused by increased mechanisation, but also due to the advance in medical research and knowledge. The claims, for example, of diseases like tuberculosis in nurses and other health workers, and Reynaud's Disease (a disease said to be the effect of vibratory tools on the hand) have been pressed upon the Minister. In consequence he proposes (419 H. of C. Official Report 1480-1481) to set up a Committee of persons, both medical and lay, to examine this problem and recommend a criterion to help the Minister to decide where the dividing line should be in difficult cases—whether a disease is not merely one which many people have from natural or constitutional causes but also one which arises out of the particular employment so that any person so employed who develops that disease may claim that it is an industrial disease within this section.

The old time limit of twelve months allowed for the discovery of a disease by section 43 (1) of that Act; Willis 581; is also under careful consideration as being unfair in many cases. The section has been purposely framed in wide and general terms, enabling the Minister to prescribe any disease, and purposely refraining from mentioning any particular occupation or class of persons.

The numerous authorities on industrial diseases under the Workmen's Compensation Acts are collected in Willis 586-626 and 724-731. As to silicosis and pneumoconiosis; Willis 627-649; see section 57, *post*.

(a) **Subject to the provisions of this Part of this Act.**—This refers to sections 56 and 57, *post*.

(b) **Insured person.**—As to who are insured persons, see section 1, *ante*, and the First Schedule, *post*. As to "personal injury . . . employment", see section 1.

(c) **Prescribed disease or injury.**—This means prescribed by regulations (section 88 (1), *post*). See the later provisions of this section. Power is also given to bring within the Act prescribed personal injuries not otherwise within section 1, if they are due to the nature of the employment and developed (as to which, see subsection (4)) after the "appointed day", that is such day as the Minister may by order appoint (section 88 (1), *post*), mainly for the purposes of sections 1 and 7, *ante*. As to the nature of the employment to which the disease is due, see the authorities collected in Willis 616-621 as to the way in which similar words in the Workmen's Compensation Act have been construed.

(d) **The Minister.**—This means the Minister of National Insurance (section 88. (1), *post*).

(e) **Is satisfied.**—This clearly means satisfied on balance. Cf. note (b) to section 40, *ante*, as to the meaning of the word where some finding of dishonesty against a person is involved.

(f) **Risk of occupation.**—There are many diseases or injuries which should be



prescribed because they can, as a result of experience, be said to be a risk of a particular occupation, for example, miner's nystagmus (No. 19 in the Schedule to the Workman's Compensation (Industrial Diseases) Consolidation Order, 1929 (S.R. & O. 1929 No. 2); Willis 720). "Occupation" means a particular trade, profession or calling, while "employment" means the work that a particular person is required to do under his particular contract of service.

(g) **Disease attributable to nature of particular employment.**—Note that, before a disease or injury can be prescribed, both conditions (a) and (b) must be fulfilled. Condition (b) will also apply to miner's nystagmus.

(h) **Regulations as to diseases or injuries after appointed day.**—"Regulations", by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press. This subsection is linked with section 89 (1), proviso (a), *post*.

(i) **Development and recrudescence of disease or injury.**—These topics are dealt with in a number of the authorities in Willis 586-603 and 724-726. "Contracted" occurs several times in section 43 (1) of the Workmen's Compensation Act, 1925; Willis 581. The various expressions are defined, so far as is relevant, in the Shorter Oxford Dictionary, 2nd Edn., 1936, as follows:—

"Develop"—to unfold itself, grow from a germ; "Recrudescence"—to break out again; "Contract"—to incur, acquire; "Receive"—to have a blow, wound, mark, etc. inflicted or made upon one or in some part: to get (a specified injury).

(k) **Right to benefit for disease which is personal injury by accident within meaning of this Act.**—This right is given by section 7, *ante*. As to "personal injury by accident", see notes to section 1, *ante*. As to a disease which is a personal injury or cause of injury, what is known as an industrial or occupational disease, or is a physical condition which arises by a gradual and natural process from the effects of a person's occupation, see Willis 14 *et seq.* and the cases there cited.

This subsection, while preserving insured persons' rights under section 7, *ante*, prevents benefit being awarded in respect of a disease as being a "personal injury by accident" under section 7 if it is also a disease prescribed under the present section by virtue of the claimant's occupation and employment, as to which, see subsection (2) and notes (f) and (g), *supra*.

**56. Application to prescribed diseases and injuries of provisions as to benefit and claims.**—(1) The benefit payable under this Part of this Act (a) in respect of a prescribed disease or injury (b), and the conditions for receipt of such benefit (c), shall be the same as in the case of personal injury by accident arising out of and in the course of a person's employment (d), subject, however, to the power to make different provision by regulations (e) as respects any matter which is to be prescribed and to the following provisions of this Part of this Act.

(2) Regulations may provide, in relation to prescribed diseases and injuries, for modifying the provisions of Part II of this Act relating to injury benefit and disablement benefit (f) and for adapting references in the said Part II to accidents, and shall provide for applying in relation to claims for benefit (g) under this Part of this Act in respect of a prescribed disease or injury, and in relation to questions arising in connection therewith or with an award of benefit, the provisions of Part III of this Act, subject to any prescribed additions or modifications (h).

(3) Without prejudice to the generality of the foregoing subsection, the said regulations may in particular include provision—

(a) for presuming any prescribed disease or injury—

(i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury;

(ii) not to be due to the nature of a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed period or for a prescribed



length of time (whether continuous or not) before, he developed the disease or injury (*i*);

- (b) for the establishment of special medical boards and the appointment of medical officers for the purposes of the regulations (including, in the case of any such board the purposes for which medical boards and medical appeal tribunals are established under Part III of this Act) (*k*);
- (c) for the payment by the prescribed persons of fees of the prescribed amount in connection with any medical examination (*l*) by any such board or officer and their return in any prescribed cases, and (so far as not required to be returned) their payment into the Industrial Injuries Fund and recovery as sums due to the fund (*m*);
- (d) for such matters as appear to the Minister to be incidental to or consequential on provisions included in the regulations by virtue of the foregoing provisions of this section (*n*).

(4) The Minister may pay such remuneration to any member of a medical board established by virtue of this section and to any medical officer appointed by virtue thereof, and such travelling and other allowances (including, subject as hereinafter provided, compensation for loss of remunerative time) to any such member or officer, and such other expenses in connection with any such board or with the work of any such officer, as the Minister, with the consent of the Treasury, may determine:

Provided that compensation for loss of time shall not be paid to any person in respect of any time during which he is in receipt of remuneration under this subsection (*o*).

#### NOTES

**General effect of section.**—This section applies the provisions as to benefits and claims in respect of personal injuries by accident which are contained in Part II of the Act, *ante*, to benefit under this Part of the Act, relating to industrial diseases, etc. Regulations may, however, be made, modifying Part II, and also Part III, relating to the determination of questions and claims, in their application to this Part. Power is given to make regulations in respect of a number of particular matters, including regulations as to when a prescribed disease or injury is to be presumed to be due or not due to the nature of a person's employment. Special medical boards may be set up for the purposes of this Part of the Act.

(a) **Benefit payable under this Part of this Act.**—This is payable under section 55, *ante*, and this section.

(b) **Prescribed disease or injury.**—This means prescribed by regulations (section 88 (1), *post*), made, for this purpose, under section 55, *ante*.

(c) **Conditions for receipt of benefit.**—As to this, see sections 27–33, *ante*.

(d) **Personal injury by accident arising out of and in the course of a person's employment.**—As to this, see section 1, *ante*.

(e) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press.

(f) **Provisions of Part II relating to injury benefit and disablement benefit.**—These are contained in sections 11–18, *ante*.

(g) **Claims for benefit.**—"Claim", by section 88 (1), *post*, includes (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *ante*), which procedure can also be applied to industrial diseases, etc., by regulations under this section; and (b) in relation to the review of an award or decision, a claim by a beneficiary under the award or affected by the decision.

(h) **Provisions of Part III.**—These relate to the determination of questions and claims. As to "questions", see especially section 36, *ante*. As to "award", see note (d) to section 45, *ante*.

(i) **Presumption that prescribed disease or injury is or is not due to nature of employment.**—Section 44 (1) of the Workmen's Compensation Act, 1925; Willis 584; provided that if a workman employed in certain scheduled employments contracted one of certain scheduled diseases, it should be deemed to have been due to the nature of the employment unless the certifying surgeon certified his opinion, or the



employer proved, that it was not so due. The authorities on that section are collected in Willis, at p. 616 *et seq.* The degree of proof required to prove the contrary will presumably be the same as that required of an employer who "proved the contrary" under that section. The applicant under that section had to prove, and the claimant will presumably still have to prove, that the death or disablement was the proximate or ultimate result of the industrial disease, before the presumption can be raised in his favour, just as he will have to prove that he has the disease or injury. Then the evidence will have to be considered to see whether "the contrary is proved". The burden of proof is not put upon any particular person. It will be a matter for the special medical board; established under paragraph (b) of this subsection, on the evidence in general. As to the difference between "employment" and "occupation", see note (f) to section 55, *ante*. As to when a disease or injury is "developed", see section 55 (4), *ante*.

A similar presumption in favour of the insured person is introduced into this Act in the case of "personal injuries by accident" by section 7 (4), *ante*. Such accidents arising in the course of his employment are to be deemed, in the absence of evidence to the contrary, also to have arisen out of it.

(h) **Special medical boards and officers.**—These will no doubt be drawn from doctors experienced in industrial diseases and injuries, especially in areas largely devoted to particular occupations. Medical boards and appeal tribunals under Part III are appointed under section 38, *ante*, and are given their powers under sections 39, 40 and (single doctor instead of board in temporary disablement cases) section 41, *ante*. The "medical officers" will presumably be "medical practitioners" (see section 88 (1), *post*, and note (c) to section 38, *ante*).

(l) **Medical examination.**—This, by section 88 (1), *post*, includes bacteriological and radiographical tests and similar investigations.

(m) **Industrial Injuries Fund.**—This is established under section 58, *post*, and is the fund into which contributions, and out of which benefits, are paid. As to the recovery (by civil proceedings) of sums due to the fund, see section 70, *post*.

(n) **Incidental or consequential.**—This gives the Minister, i.e., the Minister of National Insurance (section 88 (1), *post*), wide powers to make regulations on any matter arising under this section.

(o) **Remuneration of members of special medical board.**—This subsection is adapted from section 53, *ante*. See notes to that section.

**57. Special provisions as to certain respiratory diseases.**—(1)  
As respects pneumoconiosis (a), regulations (b) may further provide—

- (a) that, where any person is found to be suffering from pneumoconiosis accompanied by tuberculosis (c), the effects of the tuberculosis shall be treated for the purposes of this Part of this Act (d) as if they were effects of the pneumoconiosis ;
- (b) for requiring persons to be medically examined (e) before, or within a prescribed period (f) after, becoming employed in any occupation (g) in relation to which pneumoconiosis is prescribed, and to be medically examined periodically while so employed, and to furnish information required for the purposes of any such examination ;
- (c) for suspending from employment (h) in any such occupation, and in such other occupations as may be prescribed, persons found on such an examination—
  - (i) to be suffering from pneumoconiosis or tuberculosis ; or
  - (ii) to be unsuitable for such employment, having regard to the risk of pneumoconiosis and such other matters affecting their susceptibility thereto as may be prescribed (i) ;
- (d) for the payment (for any period not exceeding six months) of special benefit (not exceeding the injury benefit to which he would be entitled in respect of a personal injury by accident) (k) to any person who is found on such an examination to be suffering from pneumoconiosis and by reason thereof suspended from employment as aforesaid and is not otherwise entitled to benefit in respect of the pneumoconiosis (l) ;
- (e) for the forfeiture of benefit in respect of pneumoconiosis by any person who fails without reasonable cause to submit himself to any such examination or to furnish information required by the



regulations for the purposes thereof or who engages in any employment from which he has been suspended as aforesaid (m) ;

(f) for requiring employers (n)—

(i) to provide facilities for such examinations ;

(ii) not to employ in any occupation a person who has been suspended as aforesaid from employment therein or who has failed without reasonable cause to submit himself to such an examination ;

(iii) to give to such medical board or officer as may be prescribed (o) the prescribed notice of the commencement of any prescribed industry or process ;

and for the recovery on summary conviction of monetary penalties (p) in respect of any contravention of or failure to comply with any such requirement as is mentioned in this paragraph, so, however, that such penalties shall not exceed five pounds for every day on which the contravention or failure occurs or continues ;

(g) for such matters as appear to the Minister to be incidental to or consequential on provisions included in the regulations by virtue of the foregoing provisions of this subsection (q).

(2) Unless otherwise provided by regulations, a person shall not be entitled to injury or disablement benefit under this Part of this Act in respect of byssinosis except where he is totally and permanently incapacitated for work as the result thereof and benefit shall not be payable in respect thereof except in the case of men (r).

(3) In this section the expression " pneumoconiosis " means fibrosis of the lungs due to silica dust, asbestos dust or other dust, and includes the condition of the lungs known as dust-reticulation (s).

#### NOTES

**General effect of section.**—This section deals with certain respiratory diseases, particularly pneumoconiosis, as defined by subsection (3). It gives wide powers of making regulations as to the treating of accompanying tuberculosis as an effect of pneumoconiosis, the medical examination of persons employed in prescribed occupations, the suspension from employment of sufferers or likely sufferers from these diseases and their payment during suspension, the forfeiture of benefit in certain circumstances, and the duties of employers.

Pneumoconiosis was first brought by name into the scope of workmen's compensation by the Workmen's Compensation Act, 1943 ; Willis 631 *et seq.* ; which further amended section 47 of the Workmen's Compensation Act, 1925 ; Willis 627 ; a section, already amended by an Act of 1930, which empowered the making of schemes for the payment of compensation in occupations involving exposure to silica dust or asbestos dust or other dust. Various schemes and regulations were made. See Willis, Appendices M, N and O ; pp. 1004–1100. Other schemes, set out in the course of those pages and relating to byssinosis, were made under the Workmen's Compensation and Benefit (Byssinosis) Act, 1940 ; Willis 771.

The Workmen's Compensation (Pneumoconiosis) Act, 1945 ; 34 Statutes Supp. 158 ; gave power by any such scheme to make retrospective the provision that any period of war service or war employment should be disregarded for the purposes of certain time limits in the scheme, relating to length of employment, employers and their contributions towards compensation and medical examinations.

This section comes within the general scope of this Part of the Act, and the respiratory diseases here mentioned will no doubt be prescribed as industrial diseases under section 55, *ante*. But they require special provisions, not only as to benefit but also dealing with their prevention, arrest and cure in individual cases. The section substantially reproduces the procedure under the Workmen's Compensation Acts, with the necessary alterations to fit it into the new Scheme of Social Insurance, and giving at the same time wider powers to the Minister than were given under those Acts. The provisions of those Acts and Schemes are referred to earlier in this note and will be found in Willis at the pages there mentioned.

The period during which special benefit is payable was extended on the Report Stage from three to six months as the result of strong representations in Committee. It is intended to have medical examinations, under this Act, of pneumoconiosis sufferers every six months. If it is found that six months is too short a period to rehabilitate a man and train him for a new job, the period will have to be extended, if possible.

If a man is able to work at some other employment, his benefit under both this Act and the National Insurance Act, 1946, will cease after six months.



The number of coal miners certified to be totally disabled, or suspended, on account of pneumoconiosis in 1945 was 5,700, of whom 5,074 were in South Wales. These figures were inflated by the large number of examinations which had to stand over from 1944 owing to the shortage of suitably qualified doctors. The corresponding figures for 1944 were 2,048 and 1,605 (419 H. of C. Official Report, Written Answers, 308).

(a) **Pneumoconiosis.**—This is defined by subsection (3).

(b) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they are to be referred to the Industrial Injuries Advisory Council under section 61 (2), *post*. No regulations have been made under this section at the time of going to press. They will presumably be grouped together with those made under sections 55 and 56, *ante*.

(c) **Tuberculosis.**—This has been defined under the earlier Schemes as meaning tuberculosis of the lungs. See, for example, the Pneumoconiosis (Benefit) Scheme, 1943, paragraph 3 (S.R. & O. 1943 No. 886); Willis 1071.

(d) **For the purposes of this Part of this Act.**—This means for the purposes of sections 55 and 56, *ante*, as well as of this section.

(e) **Medically examined.**—This, by section 88 (1), *post*, includes bacteriological and radiographical tests and similar investigations. An assurance was given in Committee that the certification as a result of this examination would be treated as the date of the accident and that if at any time (even twenty years) thereafter disability supervened, benefit would be payable under the Act.

(f) **Prescribed period.**—This means prescribed by regulations (section 88 (1), *post*).

(g) **Employed in any occupation.**—As to the difference between employment and occupation, see note (f) to section 55, *ante*. As to the meaning of "employed" in a scheduled process under the Various Injuries (Silicosis) Scheme, 1931; S.R. & O. 1931 No. 342; Willis 1011; mentioned in the General note, *supra*, see *Reece v. Ministry of Supply and Ministry of Works and Planning*, [1945] 1 All E.R. 239, C.A.

(h) **Suspending from employment.**—This is only to be done by the Medical Board (see section 56, *ante*) and not on a certificate of the insured person's own doctor. Suspension was similarly provided for by the earlier Schemes. In most of these cases the contract of service will be a weekly one, but the effect of the suspension should be dealt with by any regulations made. If it is not, the suspension will put an end to the contract under the ordinary rules relating to "frustration", unless it is otherwise expressly or impliedly agreed. See also note (i), *infra*. See also the Law Reform (Frustrated Contracts) Act, 1943; 36 Halsbury's Statutes 50.

(i) **Sufferers from, risk of and susceptibility to pneumoconiosis.**—These matters are discussed, with particular reference to the mining industry in South Wales, in a Report presented by the President of the Board of Trade to Parliament in December, 1945, on the provision of employment for persons suspended from employment because of silicosis and pneumoconiosis (Cmd. 6719). It appears that pneumoconiosis is the early stage along the road to silicosis and that the greatest importance must be attached to the early removal of pneumoconiosis suspects from the mines in the initial stages of the disease, medical evidence being unanimous that, provided this is done, the progress of the disease is arrested.

As to cases where the disease develops later, see note (k), *infra*.

(k) **Special benefit for period not exceeding six months.**—"Special benefit" means benefit under this paragraph. The period of six months is fixed with the idea of giving a person who has been suspended from employment under this section, and they will mostly be miners, a period during which they can seek and train for other employment and live on their special benefit, in addition to their unemployment benefit. The period was originally three months and was criticised in Committee. It was pointed out on behalf of the Government that in any case this period could not be longer than six months, that being the maximum length of the injury benefit period under section 11 (4), *ante*. It was agreed that some time limit was necessary and the period was amended on the Report Stage to six months (see General note, *supra*), but it was pointed out in Committee that active steps were being taken to provide other employment for men in areas where there were a number of sufferers from these diseases. As to these steps, see Cmd. 6719, referred to in note (i), *supra*, where it is pointed out how much work, excluding only a few occupations, these men can do and how beneficial such work is to their physical and mental condition, quite apart from the saving in compensation and the financial benefit to the men themselves. Government-owned factories are recommended in the affected areas, let to industrial tenants with an obligation to employ a percentage of "disabled persons" as defined by section 1 of the Disabled Persons (Employment) Act, 1944; 25 Statutes Supp. 55; 37 Halsbury's Statutes 348.



This six months' period in no way affects an insured person's right to benefit if a respiratory disease eventually develops, even years later. See note (e), *supra*.

As to "personal injury by accident", see sections 1 and 7, *ante*.

(l) **Not otherwise entitled to benefit in respect of pneumoconiosis.**—This refers to cases where an insured person has been awarded benefit for the disease under sections 55 and 56, *ante*, without leaving or being suspended from his employment.

(m) **Forfeiture of benefit.**—The forfeiture section of the main part of the Act is section 32 (2), *ante*. As to "fails without reasonable cause", used here and in paragraph (f) (ii), see note (k) to that section. "Engages in any employment" means "enters into any contract of service involving employment of that kind".

(n) **Employers.**—As to who are employers, see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*. This subsection is adapted from section 2 (d) of the Workmen's Compensation (Silicosis and Asbestosis) Act, 1930; Willis 629.

(o) **Such medical board or officer as may be prescribed.**—The regulations will probably prescribe the special medical board established under section 56 (3) (b), *ante*, and either the medical officer appointed under that provision or the insurance officer appointed under section 44, *ante*.

(p) **Recovery on summary conviction of monetary penalties.**—As to this, cf. section 68, *post*, and, for the general law, 21 Halsbury's Laws (2nd Edn.) 594 *et seq.* As to penalties and fines, see 21 Halsbury's Laws (2nd Edn.) 619.

In the application of this provision to Scotland, it has effect as if the word "summary" were omitted (section 90 (c), *post*).

(q) **Incidental or consequential matters.**—This is a similar provision to section 56 (3) (d), *ante*, and gives the Minister, i.e., the Minister of National Insurance (section 88 (1), *post*), a wide power of making regulations.

(r) **Benefit for byssinosis.**—Byssinosis is defined; Willis 775; as a disease of the respiratory system common among workers engaged in certain processes in the cotton trade. As to injury and disablement benefit, see sections 11 and 12, *ante*, as applied to this Part of the Act by section 55, *ante*.

"Totally and permanently incapacitated for work" as the result of the respiratory disease known as byssinosis appeared in section 1 of the Workmen's Compensation and Benefit (Byssinosis) Act, 1940; Willis 771.

"Total incapacity" appeared in section 9 of the Workmen's Compensation Act, 1925; Willis 260. Cf. "permanently incapable of work" in section 13, *ante*. The meaning of "result" is considered in note (i) to section 7, *ante*. It is obviously a medical question.

Benefit (which by section 88 (1), *post*, means benefit under this Act) is limited to men. This limitation has been carried on from section 1 of the Byssinosis Act, *supra*, and is intentional, only men being at present employed at this particular process in the card rooms. The Bill as presented in June, 1945, did provide also for women, should they ever be so employed, but the intention now is to do this by regulations. Under that Act, sections 1 and 2; Willis 771-773; Administrative and Medical Boards were set up, and in Committee an assurance was given on behalf of the Government that "the Board", presumably meaning both Boards, would continue.

(s) **Definition of pneumoconiosis.**—This definition is the same as that introduced by section 1 (2) of the Workmen's Compensation Act, 1943; Willis 632; 19 Statutes Supp. 29. The disease is now regarded as the early stage along the road to silicosis. In the case of silicosis, X-ray examination reveals the fibrosis in nodular form, that is, in the form of knotty tumours, whereas in pneumoconiosis it appears as reticulation, that is, in the form of network. See Cmd. 6719, referred to in note (i), *supra*. See also the authorities on silicosis in Willis 636 *et seq.*

## PART V

### FINANCE, ADMINISTRATION AND LEGAL PROCEEDINGS

#### Finance

**58. Industrial Injuries Fund.**—(1) For the purposes of this Act, there shall be established, under the control and management of the Minister (a), a fund called "the Industrial Injuries Fund", into which shall be paid all contributions payable under this Act by employers and insured persons (b) and out of moneys provided by Parliament (c), and out of which shall be paid all claims for benefit (d) and any other payments which under this Act are payable out of the fund (e).

(2) Accounts of the Industrial Injuries Fund shall be prepared in such form, in such manner and at such times as the Treasury may direct (f), and the Comptroller and Auditor General shall examine and certify every such account and shall lay copies thereof, together with his report thereon, before Parliament (g).



(3) Any moneys forming part of the Industrial Injuries Fund may from time to time be paid over to the National Debt Commissioners (*h*) and by them invested, in accordance with such directions as may be given by the Treasury, in any securities which are for the time being authorised by Parliament as investments for savings banks funds (*i*).

(4) The National Debt Commissioners shall present to Parliament annually an account of the securities in which moneys forming part of the Industrial Injuries Fund are for the time being invested (*k*).

#### NOTES

**General effect of section.**—This section begins Part V, which relates to Finance, Administration and Legal Proceedings. Sections 58–60 deal with finance. This section establishes the Industrial Injuries Fund, into which are paid all contributions by employers and insured persons and the contribution provided by Parliament, and out of which are paid all claims for benefit and any other authorised payments. As to the proportions in which the contributions are divided between employer, insured person and moneys provided by Parliament, see section 2, *ante*, and notes thereto. The section provides for the preparation and examination of the accounts of the Fund, and gives the Treasury and the Comptroller and Auditor General supervisory powers, powers of audit and powers relating to the investment by the National Debt Commissioners of moneys forming part of the Fund. Accounts of the investment of moneys are to be presented to Parliament annually.

The section follows established practice and is closely modelled on section 58 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 533; which created the Unemployment Fund for the purposes of that Act. The National Health Insurance Fund was similarly created by section 140 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1151; among other funds created by that Act. See also sections 158 and 159; *ibid.* 1164, 1165. Cf. the Pensions Account kept under section 14 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; *ibid.* 1210.

Now, by sections 35 and 36 of the National Insurance Act, 1946, the National Insurance Fund and the National Insurance (Reserve) Fund are created, to the latter being transferred the assets of the funds created by the earlier Acts. These funds are specified in the Tenth Schedule to that Act.

(a) **The Minister.**—This, by section 88 (1), *post*, means the Minister of National Insurance.

(b) **Contributions.**—As to these, and as to the proportion in which they are divided between employers and insured persons (as to which, see section 1, *ante*), see section 2 (a), *ante*, and the Second Schedule, *post*.

(c) **Contributions payable out of moneys provided by Parliament.**—These will be paid under section 2 (b), *ante*.

(d) **Claims for benefit.**—This must mean successful claims for benefit. "Claim" by section 88 (1), *post*, includes (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *ante*); and (b) in relation to the review of an award or decision, a claim by a beneficiary under the award or affected by the decision. "Benefit" means benefit under this Act, *ibid.*

(e) **Any other payments payable out of the fund.**—For example, sums payable under section 75, *post*, in respect of artificial limbs, etc., and unemployability supplement payable under section 82, *post*, out of the fund to persons unemployable as a result of injury or disease occurring before the "appointed day" (as to which, see section 88 (1), *post*), and therefore entitled to workmen's compensation until that day.

Note that salaries, remuneration, etc., paid to officials and others under sections 53, 56, *ante*, and other sections, are not payable out of the fund.

(f) **Accounts of the fund.**—An assurance was given on behalf of the Government in Committee that it was the intention that these accounts should be yearly, though it was not thought necessary to embody such a provision in the Act. It might, for example, be desirable to prepare accounts at shorter intervals. Cf. subsection (4). The Treasury direction will be given by inter-departmental communication.

"The Treasury" means the Lord High Treasurer for the time being or the Commissioners for the time being of His Majesty's Treasury (Interpretation Act, 1889, section 12 (2); 18 Halsbury's Statutes 995). See, generally, 6 Halsbury's Laws (2nd Edn.) 702–704.

(g) **Comptroller and Auditor General to audit accounts.**—This official is the head of the Exchequer and Audit Department of the Treasury, which controls the issues of public money from the Consolidated Fund and examines on behalf of Parliament the public accounts, and especially the accounts of all supply grants, for the purpose of reporting thereon to the House of Commons. See, generally, 28 Halsbury's Laws (2nd Edn.) 266 *et seq.*

(h) **National Debt Commissioners.**—This means the Commissioners for the time being for the Reduction of the National Debt (Interpretation Act, 1889, section 12 (17); 18 Halsbury's Statutes 994). The Commissioners are the Speaker,



the Chancellor of the Exchequer, the Master of the Rolls, the Governor and Deputy Governor of the Bank of England, and the Accountant-General of the Supreme Court. See, generally, 28 Halsbury's Laws (2nd Edn.) 529 *et seq.* See also the Bank of England Act, 1946.

(i) **Investment in authorised securities.**—As to the securities which are for the time authorised by Parliament as investments for savings bank funds, see 1 Halsbury's Laws (2nd Edn.) 787 *et seq.*

(h) **Account of invested moneys.**—Note that this account is required to be presented annually and compare subsection (2).

**59. Reports by Government Actuary.**—(1) The Government Actuary (a) shall—

- (a) review the operation of this Act during the period ending with the thirty-first day of March (b) next after the expiration of five years from the appointed day (c) and thereafter during the period ending with the thirty-first day of March in every fifth year and, on each such review, make a report to the Treasury (d) on the financial condition of the Industrial Injuries Fund (e) and the adequacy or otherwise of the contributions payable under this Act to support the benefits payable thereunder (f);
- (b) make an interim review of, and report to the Treasury on, the operation of this Act during the period ending with the thirty-first day of March next after the expiration of one year from the appointed day and thereafter during the period of twelve months ending with the thirty-first day of March in every year other than a year in which the period to be covered by a review and report under the foregoing paragraph ends (g):

Provided that the Treasury may at any time direct that the period to be covered by any review and report under paragraph (a) of this subsection shall be reduced and that the making of that and subsequent reviews and reports under that paragraph shall be accelerated accordingly, and may dispense with the making of a review and report under paragraph (b) thereof in any year (h).

(2) The Treasury shall lay before Parliament a copy of every report made to them under this section (i).

(3) Any function under this section of the Government Actuary may be performed by the Deputy Government Actuary (k).

#### NOTES

**General effect of section.**—This section gives a power of periodical review of operation of the Act and of the financial condition of the Industrial Injuries Fund and the adequacy of contributions to support benefits, the review to be held every five years, and a power of interim review of the operation of the Act every year except the years of quinquennial review. Shorter periods can be fixed and the annual review dispensed with if desirable. The reviews, and the resulting reports to Parliament, will be carried out by the Government Actuary.

This section also follows established practice. A similar power of review was given by section 59 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 533; though in that Act it was given to the Unemployment Insurance Statutory Committee (constituted under section 56; 28 Halsbury's Statutes 532) which reported to the Minister. Periodical review and report by the Government Actuary was also provided for by section 41 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1231.

Section 39 of the National Insurance Act, 1946, is almost identical with this section.

(a) **The Government Actuary.**—See note (k), *infra*.

(b) **Thirty-first day of March.**—This date marks the end of the financial year. See the Interpretation Act, 1889, section 22; 18 Halsbury's Statutes 1001.

(c) **The appointed day.**—This, by section 88 (1), *post*, means such day as the Minister may by order appoint. This day will be the day on which the Act comes into operation and replaces the Workmen's Compensation Acts, with respect to any injury or disease happening thereafter. See sections 1 and 7, *ante*. No day has been appointed at the time of going to press.

(d) **Quinquennial report.**—This period is subject to reduction, under the proviso. The report to the Treasury will presumably not be published at this stage.



(e) **Industrial Injuries Fund.**—This is established under section 58, *ante*.

(f) **Adequacy of contributions to support benefits.**—Contributions are payable by employers and insured persons under section 2, *ante*. As to benefits generally (which means benefits under this Act (section 88 (1), *post*)), see section 7, *ante*. The first report by the Actuary should give a reliable pointer as to how far the Government's estimates of cost will be confirmed, though expenditure on benefits will not have fully matured. Any surplus disclosed as a result of the first report of the Actuary is not likely to be available to increase rates of benefit or reduce rates of contributions, but will be needed to meet the rising cost of benefit in years to come. This rise in cost will be due to the accumulation, over a considerable period of years, of long-term cases corresponding to the "past cases" under the Workmen's Compensation Acts (419 H. of C. Official Report 1451).

(g) **Interim review and report.**—Subject to the reduction of the period under the proviso, this will take place annually, except in the years of the quinquennial review under subsection (1) (a). The report will presumably not be published at this stage. The interim review and report is to be on the operation of the Act generally and is not required to deal specifically with the adequacy of contributions to support benefits, a thing which it would not be possible fairly to assess in so short a period.

(h) **Reduction of period of review.**—This is left entirely to the discretion of the Treasury. Their direction will be by inter-departmental communication. The power to dispense with the annual interim review might come to be exercised when it was obvious that the Act was working well, or where it was suddenly decided to advance the quinquennial review and hold it in that year. No power is given to increase the period of review beyond five years.

(i) **Copy of report to be laid before Parliament.**—When so laid, the reports will be published if Parliament so orders.

(k) **Government Actuary and Deputy Government Actuary.**—These officials were originally appointed by a Treasury minute some thirty years ago. They derive their powers from, *inter alia*, sections in various Acts of Parliament defining their functions for the purposes of those particular Acts. Section 150 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1159; and section 41 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; *ibid.* 1231; for example, gave such powers. The Chancellor of the Exchequer answers for the Government Actuary in Parliament.

## 60. Expenses of Minister and other Government departments.

—(1) There shall be paid out of moneys provided by Parliament any expenses incurred by the Minister (a) or any other Government department (b) in carrying this Act into effect, except expenses required by some provision thereof to be paid out of the Industrial Injuries Fund (c).

(2) There shall be paid to the Treasury out of the Industrial Injuries Fund, at such times and in such manner as the Treasury may direct (d), such sum as the Minister may estimate in accordance with directions given by the Treasury to be the amount of the said expenses of the Minister or any other Government department; and in estimating expenses for the purposes of this subsection there shall be included—

- (a) such amount as in the opinion of the Treasury approximately represents the amount of the accruing liability in respect of any superannuation allowances, lump sums or gratuities payable under the Superannuation Acts, 1834 to 1943 (e), to which any officers, inspectors or servants employed for the purposes of this Act (f) or the legal personal representatives (g) of any such persons will become entitled in respect of that employment;
- (b) in respect of the use of any premises belonging to the Crown and used for the purposes of this Act (h), an amount determined by the Treasury with the consent of the Minister, regard being had to the rental value of the premises (i).

## NOTES

**General effect of section.**—This section makes provision for the payment out of moneys provided by Parliament of the general expenses of the Minister or any other Government Department in carrying the Act into effect, except those required to be paid out of the Industrial Injuries Fund, and goes on to specify certain expenses which are to be defrayed out of that fund, in addition to the payment of benefit which is its main purpose. These are superannuation allowances, etc., payable to officers, inspectors or servants employed for the purposes of this Act, and sums payable for the use of Crown



premises. Section 38 of the National Insurance Act, 1946, is almost identical with this section.

Sections 61 and 62 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 536; contained similar provisions. See also section 15 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1211.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **Any other Government department.**—For example, the Ministry of Pensions, the Ministry of Health and the Ministry of Labour.

(c) **Expenses required to be paid out of the Industrial Injuries Fund.**—This fund is established under section 58, *ante*. Certain expenses, as distinct from benefit which is its main purpose, are payable out of the fund under subsection (2). See also section 74 (2), *post*, which provides for a contribution by the Minister out of the fund towards the cost of vocational training and industrial rehabilitation, and section 75 (2), *post*, which gives a similar power in connection with the provision of artificial limbs, etc.

(d) **Directions of the Treasury.**—This will be by inter-departmental communication.

(e) **Superannuation Acts, 1834 to 1943.**—As to what these are, see section 5 of the Foreign Service Act, 1943; 36 Halsbury's Statutes 48. See also 16 Halsbury's Statutes 122, 179, 186, 238, 551, 556, 686 and 772; 13 Halsbury's Statutes 374; 28 Halsbury's Statutes 307; and the Superannuation Act, 1946. See section 54, *ante*, for superannuation allowances payable to Commissioners and deputy Commissioners.

(f) **Officers, inspectors or servants employed for the purposes of this Act.**—"Officers" refers primarily to insurance officers, appointed under section 44, *ante*. There will also be medical officers, appointed under section 56 (3) (b), *ante*. "Inspectors" are appointed under section 62, *post*. "Servants" covers a large number of employees of all kinds, mainly clerical staff. They will all be "employed" within the meaning of section 1, *ante*, unless expressly excepted. They will be Crown servants (see section 76, *post*).

(g) **Legal personal representatives.**—This means executors under a will or administrators under letters of administration. See Administration of Estates Act, 1925, section 55 (1) (xi); 8 Halsbury's Statutes 358; and, generally, 14 Halsbury's Laws (2nd Edn.) 160. See also section 27 (3) (b), *ante*.

(h) **Premises belonging to the Crown and used for the purposes of this Act.**—"Premises", in this sense, means, or at least includes, messuages, buildings, lands, easements and hereditaments of any tenure. See, for example, this definition given for the purposes of that Act by section 343 (1) of the Public Health Act, 1936; 29 Halsbury's Statutes 536. As to the general rights of the Crown in relation to property, see 6 Halsbury's Laws (2nd Edn.) 584 *et seq.*

Premises used for the purposes of this Act include office premises used for the local offices of the Minister in various districts, premises used by the Commissioner, insurance tribunals and officers, besides those used for a variety of other purposes. The intention is for the Minister to have a small central headquarters staff in London, an executive headquarters staff in Newcastle-on-Tyne and local offices in all important centres throughout the country, engaged in the day-to-day administration of the scheme (414 H. of C. Official Report 282).

(i) **Rental value.**—This expression will presumably be interpreted in the same sense as in rating matters, that is, not necessarily the actual rent being paid, but a value fixed in one of two ways. It will be either (1) on the basis of the definition of "gross value" given in section 68 (1) of the Rating and Valuation Act, 1925; 14 Halsbury's Statutes 686; namely the rent at which the premises might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and if the landlord undertook to bear the cost of repairs and insurance and any other expenses necessary to maintain the property in a state to command that rent (but not allowing for services by the landlord), or (2) on the basis of the definition of "net annual value" given in section 22 (1) (b) of that Act; 14 Halsbury's Statutes 646; as amended by section 48 (3) and Schedule IX of the Tithe Act, 1936; 29 Halsbury's Statutes 961, 974; that is the value where the tenant undertakes all the above liabilities. The section does not enact that the amount paid for the use of Crown premises shall be the same as the rental value, but only that regard shall be had to the rental value.

### Administration

**61. Industrial Injuries Advisory Council.**—(1) There shall be constituted an Industrial Injuries Advisory Council, which shall consist of a chairman appointed by the Minister (a) and such number of other members so appointed as the Minister may determine, including an equal number of persons appointed by him, after consultation with such organisations as he thinks fit, to represent employers and insured persons respectively (b).



(2) Where the Minister proposes to make any regulations under this Act (c), he shall (unless it appears to him that by reason of the urgency of the matter it is inexpedient so to do) (d) refer the proposals, in the form of draft regulations or otherwise, to the said Council for consideration and advice (e); and the Minister may from time to time refer to the said Council for consideration and advice such questions relating to this Act as he thinks fit (f).

(3) The Minister may pay to the chairman and other members of the said Council and to persons attending meetings at the request of the Council such expenses and travelling and other allowances as the Minister with the consent of the Treasury may determine (g).

#### NOTES

**General effect of section.**—This section constitutes the Industrial Injuries Advisory Council and provides for its composition, its supervisory powers over regulations drafted by the Minister, and the expenses of the members.

The general functions of the Council will be to give the Minister advice "at every stage in the administration of this scheme", especially in the earlier stages when the details are being framed and embodied in regulations (414 H. of C. Official Report 283). No doubt the advice on regulations will be the most important part of the Council's work, and that is specifically referred to in subsection (2). This Act is very largely a framework on which regulations will be hung to provide for a great number of administrative and other details. In advising on the making of these regulations the Council will be able to play a very important part in the shaping of the new scheme. The Council is to be composed of an equal number of persons representing employers and insured persons respectively, so as to insure the collaboration of industry, in both its aspects, in the development and administration of the scheme. No doubt regulations will need to be changed and new regulations will need to be made as the scheme develops in operation, and the importance of the Council's work in advising on them will accordingly last for a long time. The Council have no express power to initiate advice or regulations, only power to advise on matters submitted to them, but in practice it seems to be intended that they shall do so.

A similar body, the Unemployment Insurance Statutory Committee, was constituted and empowered by sections 56 and 57 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 532, 533; to give advice and assistance to the Minister in connection with the working of that Act. The present section is largely modelled on those sections, though there is no specific provision here, as in section 56 (2) of that Act, that at least one member shall be a woman. The choice is apparently left open to the Minister. Nor is there here any limitation as to numbers. The power of advising on regulations is modelled on section 104 of that Act; 28 Halsbury's Statutes 561; though that section laid down a rather more elaborate procedure.

The National Health Insurance Joint Committee, constituted under section 160 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1165; and also exercising powers under section 34 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1227; was a rather different body, both in composition and functions.

Compare also the National Advisory Council and District Advisory Councils established under section 17 of the Disabled Persons (Employment) Act, 1944; 37 Halsbury's Statutes 358.

Section 41 of the National Insurance Act, 1946, constitutes the National Insurance Advisory Committee, with functions similar to the Council created by this Act. There will also be local advisory committees under that Act; see section 42, *ibid.*

(a) **Chairman appointed by the Minister.**—It is left to the Minister to decide whether the chairman shall be in any way representative of employers or insured persons or whether he shall be a person having no special connection with either. "The Minister" means the Minister of National Insurance (section 88 (1), *post*).

(b) **Composition of Council.**—The size of the Council is left to the Minister, but the numbers of members chosen to represent employers and insured persons respectively must be equal. The organisations to be consulted will of course include employers' federations on the one hand and trade unions on the other. These organisations will probably submit the names of representatives. Apart from these persons, and the section clearly obliges the Minister to appoint representatives of employers and insured persons, the Minister's choice is unfettered. It may well be that one or more medical members will be appointed, particularly members who can deal with industrial diseases and the scheduling of them, and with rehabilitation and vocational training. As to who are employers, see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*. An insured person, by section 88 (1), *post*, means a person employed in insurable employment, as to which, see section 1, *ante*, and the First Schedule, *post*.

(c) **Regulations under this Act.**—These are made under the section giving the power and under sections 86 and 87, *post*. Section 87 requires that they are to be laid



before Parliament for forty days, during which either House may annul them. This is to be done after they have been referred to the Council under this subsection.

(d) **No reference to Council in urgent matters.**—It is unlikely that regulations will be so urgent that it is inexpedient to refer them, but such an emergency might arise, for example, where an earlier statutory provision, or regulation, was about to lapse unless renewed by regulation, or where some financial difficulty or some anomaly in the administration of the Act suddenly became apparent and needed putting right, or where because of illness, etc. it was impossible to summon a quorum of the Council in time.

(e) **Reference of proposals for regulations.**—The Minister, it appears, will not take part in the Council's discussions, unless the proposals are referred and explained to the Council by him personally; usually they will be referred in writing, to allow the Council to discuss them freely. The Council may only advise the Minister, and he is not bound to accept their advice.

(f) **Reference of other questions.**—These may be any questions relating to this Act which arise. They are not to be confused with the "questions" arising in particular cases, the determination of which is provided for by section 36, *ante*.

(g) **Payment of expenses to Council and others.**—The members of the Council will receive no salary or other remuneration. They will presumably have the power to summon experts and advisers, who will also, like the members of the Council, be entitled to expenses and travelling and other allowances. As to these, see section 53, *ante*. They do not expressly include compensation for loss of remunerative time. Cf. section 53 (3). The Treasury decision will be notified by inter-departmental communication. These expenses and allowances will not be paid out of the Industrial Injuries Fund established under section 58, *ante*; see section 60, *ante*. But there may be a repayment out of the fund later under section 60 (2), *ante*.

**62. Inspectors.**—(1) For the purposes of this Act (a), the Minister (b) may appoint such inspectors as he may with the consent of the Treasury determine, and may pay to them such salaries or remuneration as may be so determined (c).

(2) An inspector appointed under this Act shall, for the purposes of the execution of this Act (d), have power to do all or any of the following things, namely:—

- (a) to enter at all reasonable times any premises or place liable to inspection under this section (e);
- (b) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place or for investigating the circumstances in which any injury or disease which has given or may give rise to a claim for benefit was or may have been received or contracted (f);
- (c) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Act on which he may reasonably require information, every person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an insured person or employed by the employer of any insured person, and to require every such person to be so examined (g);
- (d) to exercise such other powers as may be necessary for carrying this Act into effect (h).

(3) The occupier (i) of any premises or place liable to inspection under this section (h) and any person who is or has been employing any insured person, and the servants and agents (l) of any such occupier or other person, and any insured person, shall furnish to any inspector all such information, and produce for his inspection all such documents (m), as the inspector may reasonably require (n) for the purpose of ascertaining whether contributions are or have been payable, or have been duly paid, by or in respect of any person (o), or whether benefit is or was payable to or in respect of any person (p).

(4) If any person—

- (a) wilfully delays or obstructs an inspector in the exercise of any power under this section (q); or



- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required so to do under this section (r) (s) ;

he shall be liable on summary conviction to a fine not exceeding ten pounds in the case of a first offence under this subsection, and not exceeding fifty pounds in the case of a second or subsequent such offence (t) :

Provided that no one shall be required under this section to answer any question or to give any evidence tending to incriminate himself (u).

(5) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purposes of this Act shall, if so required, produce the said certificate (v).

(6) The premises and places liable to inspection under this section are any premises or places where an inspector appointed under this Act has reasonable grounds for supposing that any insured persons are employed, or that any injury or disease has been or may have been received or contracted which has given or may give rise to a claim for benefit, except that they do not include any private dwelling house not used by or by permission of the occupier for the purposes of a trade or business (w).

(7) Where any premises or place are or is liable to be inspected by inspectors or officers appointed or employed by, or are or is under the control of, some other Government department, the Minister may make arrangements with that other Government department for any of the powers and duties of inspectors under this section being carried out by inspectors or officers appointed or employed by that other Government department, and, where such an arrangement is made, such inspectors and officers shall have all the powers of an inspector under this section (x).

#### NOTES

**General effect of section.**—This section empowers the Minister to appoint and pay inspectors. They are given very wide powers under the section, including powers of entry on premises or other places, of examination and inquiry into the circumstances of accidents and diseases, and of examination of persons. Correspondingly wide duties of giving information and producing documents to the inspector are created. Fines are recoverable on summary conviction for non-compliance with the section.

Similar provisions are to be found in a number of recent Acts, such as sections 64, 65 and 66 of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 537, 538 ; sections 165 and 166 of the National Health Insurance Act, 1936 ; 29 Halsbury's Statutes 1169, 1170 ; sections 122 and 123 of the Factories Act, 1937 ; 30 Halsbury's Statutes 283, 284 ; and section 17 of the Wages Councils Act, 1945 ; 30 Statutes Supp. 52. Section 16 of this last Act ; 30 Statutes Supp. 52 ; provides a defence for an employer, not given by the other Acts, of proving that the offence was due to the act or default of another person and of bringing that person before the Court. The powers given under the present Act were much criticised in Committee and on the Report Stage as unduly infringing the liberty of the subject and exposing people to interrogation, etc., merely because they happened to be on the premises. But it would seem that there is little real risk of this happening in practice. The powers given under the earlier Acts do not seem to have been unduly abused. Further it was pointed out on behalf of the Government that if an inspector examined a person clearly quite unconnected with the accident it could probably be said that he was not doing it " for the purposes of the execution of this Act " within subsection (2) and was therefore acting outside his powers.

Section 49 of the National Insurance Act, 1946 is almost exactly the same as this section, and to bring the two sections into conformity certain amendments were made in the House of Lords to this section and one amendment was made to the other. All were intended to safeguard people against abuse by inspectors of their powers. The amendments deleted the power given to inspectors to require persons to sign a declaration of the truth of matters in respect of which they have been examined and deleted the offence of concealing or attempting to conceal any person or preventing or attempting to prevent a person from appearing before or being examined by an inspector.

(a) **For the purposes of this Act.**—That is, mainly, for the purposes of this section.

(b) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(c) **Appointment and payment of inspectors.**—The number and remuneration of inspectors will be governed by the needs of the areas for which they will be appointed and by the amounts which the Treasury are prepared to allocate for this purpose.



They will be paid out of general funds and not out of the Industrial Injuries Fund, established under section 58, *ante*.

(d) **For the purposes of the execution of this Act.**—In answer to criticisms in Committee of these powers as being open to abuse it was pointed out that if they were abused the inspector would probably not be using them "for the purposes of the execution of this Act".

(e) **Premises or place liable to inspection.**—The premises or places liable to inspection are specified in subsection (6). As to "premises", see note (h) to section 60, *ante*, where one of the statutory definitions of "premises" is referred to. "Place" is a wider word, presumably including the scene of any accident not happening in a place to which all members of the public have access as such. The word, as used in other statutes, has been discussed in the Courts, for example, in *Powell v. Kempton Park Racecourse Co.*, [1899] A.C. 143; 25 Digest 441, 358; a case concerned with section 1 of the Betting Act, 1853; 8 Halsbury's Statutes 1156; but as used in the present Act it would seem to have no limit except that imposed by subsection (6). If it is a public place, the right of entry already exists. What is a reasonable time is a question of fact in each case. Cf. Sale of Goods Act, 1893, section 56; 17 Halsbury's Statutes 640.

(f) **Power of examination and inquiry.**—Provisions of the Act requiring compliance for the purposes of this section are, for example, those of Part I, *ante* (contributions); section 25, *ante* (obligations of claimants and beneficiaries); section 26, *ante* (obligations of employers); section 65, *post* (stamping cards).

"Inquiry" is not confined to certain persons, as in paragraph (c), where the right to "examine" is limited.

As to injuries, see sections 7 and 55, *ante*. As to diseases, see section 55. "Claim", by section 88 (1), *post*, includes (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *ante*); and (b) in relation to the review of an award or decision, a claim by a beneficiary under the award or affected by the decision. "Benefit" means benefit under this Act (*ibid.*). As to "received or contracted", see note (i) to section 55, *ante*.

(g) **Power to examine certain persons.**—This "examination" is limited to certain classes or persons, either those found in the premises or place (and therefore possibly able to give useful information) or else, and note that these two qualifications remain alternative in spite of an attempted amendment in Committee substituting "and" for "or", reasonably believed to be or have been insured persons or employees. It has been found under the Workmen's Compensation Acts that it was very difficult to get evidence of what really happened at an accident. This provision is designed to meet that difficulty and to enable examination of persons who are not in the premises or place but who can give material information, not only perhaps, about the accident or disease but also as to yet other persons who may be able to give information. The words "on which he may reasonably require information" were added in Committee in the House of Lords. As to "reasonable cause", see note (h) to section 32, *ante*. The reasonableness of the cause for the inspector's belief or of his requirements can apparently be inquired into as a question of fact. It is not enough for him to allege or prove that he in fact had an honest belief which he thought reasonable. Cf. *Liversidge v. Anderson*, [1942] A.C. 206; [1941] 3 All E.R. 338; Digest Supp. Presumably, too, his requirements must in fact be reasonable. As to "employed", "employer" and "insured person", see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*. The subsection originally gave a power to take signed statements, but this was removed in Committee in the House of Lords.

(h) **Other powers.**—This seems to give the inspector complete powers, so long as they are "necessary for carrying this Act into effect". This is of course a question of fact. It is not what the inspector thinks is necessary but what is in fact necessary, that he may do.

(i) **Occupier.**—The occupier of a factory or workshop within the Factories Act, 1937; 30 Halsbury's Statutes 201; means the person who runs it, who regulates and controls the work done there and is responsible for the fulfilment of the provisions of the Factories Act within it (*Ramsay v. Mackie* (1904), 7 F. (Ct. of Sess.) 106, at p. 109). Special meanings are given to the word in relation to docks, certain buildings, railways and machines. See sections 105–108 and 139 of the Act; 30 Halsbury's Statutes 272–277 and 292. In relation to premises or places generally, the occupier is the person who would be treated as such for the purposes of the law of landlord and tenant and of rating, that is, the person having the legal right to possession and control of the premises or place, coupled with an intention to occupy and make beneficial use of the property. See *Westminster Corporation v. Southern Rail. Co.*, [1936] A.C. 511; Digest Supp. The occupier is distinguished in law from the owner, the person entitled to the rents and profits of the premises or place, and also from a person having a mere licence to go into another person's premises, for example, a contractor who goes in with his workmen to do work there.

(k) **Premises or place liable to inspection under this section.**—See subsection (6).



(l) **Servants and agents.**—A principal has the right to direct what work his agent shall do; but a master has the further right to direct his servant how the work is to be done. See, for example, *R. v. Walker* (1858), 27 L.J. (M.C.) 207, C.C.R., per BRAMWELL, B., at p. 208; 34 Digest 28, 64.

(m) **Information and documents.**—"Information" is a general term, including oral information as to his own knowledge, hearsay evidence, and documents. "Documents" means any permanent record, written, printed or otherwise expressed in a permanent medium. Cf. the law of libel, 20 Halsbury's Laws (2nd Edn.) 383 *et seq.* In the Evidence Act, 1938, section 6; 31 Halsbury's Statutes 147; "Document" includes books, maps, plans, drawings and photographs. Note that this definition is not exhaustive.

(n) **May reasonably require.**—See note (g), *supra*.

(o) **Contributions.**—As to the payment of these, see sections 2-5, *ante*.

(p) **Benefit.**—This, by section 88 (1), *post*, means benefit under this Act, that is, under sections 7 and 11-35, *ante*.

(q) **Wilfully delays or obstructs an inspector.**—The expression "wilful obstruction" is used in section 32 (2) (b), *ante*. As to its meaning, see note (p) to that section. "Resisting or wilfully obstructing" any constable or peace officer when in the execution of his duty occurs in section 2 of the Prevention of Crimes Amendment Act, 1885; 4 Halsbury's Statutes 714. The obstruction under that section has been held not to be confined to physical obstruction. Warning cars which are being driven at an illegal speed of a police trap was obstruction (*Betts v. Stevens*, [1910] 1 K.B. 1; 15 Digest, 710, 7678. So warning witnesses of an accident of an inspector's approach so that they could escape might be obstruction under the present section. Persuading or forcing a witness to hide from the inspector would clearly be obstruction. A crowd refusing to disperse at a constable's request has been held to be obstructing under the Act of 1885 (*Despard v. Wilcox* (1910), 102 L.T. 103; 15 Digest 710, 7680). "Delays" would in most cases be proved by the same evidence as "obstructs". It is, of course, a good defence to prove that the delay or obstruction is not wilful. Similar provisions to this one appear in a number of Acts besides those mentioned in the General note, *supra*.

(r) **Refuses or neglects to answer questions, etc.**—In this paragraph the word used was originally "fails". The element of wilfulness was therefore not necessary to constitute an offence. Mere proof of the failure of any person to do what was required would have made him guilty. If he showed that his failure was unintentional this would have been a thing for the Bench to take into account when assessing the fine. Often, no doubt, in such a case the summons would have been dismissed on payment of costs. In the House of Lords, however, this was pointed out, and on the Report Stage the word was amended to "refuses or neglects", importing the element of wilfulness or negligence into the failure. See also note (q), *supra*. As to the duty to answer questions, etc., see subsections (2) and (3).

(s) **Deleted provision as to concealment.**—A paragraph was deleted, in Committee in the House of Lords, which made it an offence to conceal or attempt to conceal any person or prevent him from appearing before or being examined by an inspector. This would, of course, have been an offence in which the element of wilfulness was essential.

(t) **Fine on summary conviction.**—A summary conviction is a conviction by a court having summary jurisdiction under the Summary Jurisdiction Acts. As to such courts and their procedure and powers, see, generally, 21 Halsbury's Laws (2nd Edn.) 511 *et seq.* The amount of the fine is of course a matter for the Bench in each case. Often a summons is dismissed on payment of costs, no conviction being recorded against the defendant. By section 49 (5) of the National Insurance Act, 1946, an offence under this section is not to be deemed to be a first offence if there has been a previous conviction under that section. As to "deemed", see note (s) to section 7, *ante*.

(u) **Evidence tending to incriminate himself.**—This proviso repeats the general rule of the law of evidence, but with the difference that here the protection does not extend to the wife or husband of the person. It only protects the person himself. As to the general law, see 13 Halsbury's Laws (2nd Edn.) 729-733. As to wives and husbands as competent and compellable witnesses, see note (l) to section 68, *post*. Note that this proviso applies not only to giving evidence in any court in any proceedings, civil or criminal, but also to questions asked anywhere and at any time. Under the general law, however, a person charged and being a witness in pursuance of the Criminal Evidence Act, 1898, which made accused persons competent witnesses in their own defence, may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged (section 1 (e) of that Act; 8 Halsbury's Statutes 249). But he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character unless—(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence where-



with he is then charged ; or (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution ; or (iii) he has given evidence against any other person charged with the same offence. (*Ibid.*, section 1 (f) ; 8 Halsbury's Statutes 249.) An example under (i) is a charge of being an habitual criminal. A defence under (ii) is commonly called "putting his character in issue". As to section 1 (e) and (f) generally, and as to the meaning of "charged" in section 1 (f), see *Stirland v. Director of Public Prosecutions*, [1944] A.C. 315 ; [1944] 2 All E.R. 13, H.L.

(v) **Inspector's certificate.**—The form of the certificate will presumably be prescribed by regulations. Cf. the Unemployment Insurance (Inspectors) Regulations, 1936 (S.R. & O. 1936 No. 770), made under section 65 of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 537.

(w) **Premises and places liable to inspection.**—Most of the matters contained in this subsection are dealt with in the earlier notes to this section. See, especially, notes (e), (g) and (i), *supra*. See also, as to "reasonable grounds", note (k) to section 32, *ante*. "Private dwelling house" is used in section 343(1) of the Public Health Act, 1936 ; 29 Halsbury's Statutes 536 ; but is not defined. It was held in *McNair v. Baker*, [1904] 1 K.B. 208 ; 36 Digest 181, 261 ; not to include a club, even though members lived there for periods. "Dwelling house" has been much considered under the Rent Restrictions Acts. The Acts apply "to a house or a part of a house let as a separate dwelling" (section 12 (2) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 ; 10 Halsbury's Statutes 343). It may therefore consist of a flat or even a single room. It seems that the same tests would be applied under this Act. "Dwelling house" is also defined, for the purposes of Part IV of the Housing Act, 1936, by section 68 of that Act ; 29 Halsbury's Statutes 615 ; as "any premises used as a separate dwelling by members of the working classes or of a type suitable for such use". The dwelling house is not protected from entry if it is used by or by the permission of the occupier (as to whom, see note (i), *supra*) for the purposes of a trade or business. The trade or business may be that of an employer for whom the person using the house works (as to employer's trade or business, see note (d) to section 8, note (c) to section 10, *ante*, and section 88 (6), *post*), or that of the person using the house. Examples are a watchmaker who works in his own house, a tailor, a dressmaker, a teacher of music or drawing. A public house is not protected from entry, but the private dwelling house above it of the licensee or manager would be protected. As to "contracting" or "receiving" a disease or injury, see note (i) to section 55 (4), *ante*.

(x) **Arrangements with other Government departments.**—Similar provisions appeared in other Acts, for example in section 66 of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 538 ; and now in section 49 (8) of the National Insurance Act, 1946.

**63. Proof of age, marriage and death.**—(1) Where the age, marriage or death of a person is required to be ascertained or proved for the purposes of this Act (a), any person (b) shall,—

- (a) on presenting to the custodian of the register under the enactments relating to the registration of births, marriages and deaths where-in particulars of the birth, marriage or death, as the case may be, of the first-mentioned person are entered (c) a duly completed requisition in writing in that behalf (d) ; and
  - (b) on payment of a fee, in the case of a birth certificate, of sixpence, and, in the case of a marriage or death certificate, of one shilling ;
- be entitled to obtain a copy, certified under the hand of the custodian, of the entry of those particulars (e).

(2) Requisitions for the purposes of the last foregoing subsection shall be in such form and contain such particulars as may from time to time be specified by the Registrar General, and suitable forms thereof shall, on request, be supplied without charge by every superintendent registrar and registrar (f).

(3) In this section the expression "Registrar General" means the Registrar General of births, deaths and marriages, and the expressions "superintendent registrar" and "registrar" mean, respectively, a superintendent registrar and registrar for the purposes of the enactments relating to the registration of births, deaths and marriages (g).

#### NOTES

**General effect of section.**—This section provides the method of ascertaining and proving age, marriage or death for the purposes of this Act. Certified copies of entries



in the appropriate register are made obtainable for a fee of 6d. for a birth certificate and 1s. for a marriage or death certificate. The requisition for the certificate has to be in writing in a form specified by the Registrar-General and supplied free of charge by superintendent registrars and registrars. Similar provisions were contained in section 91 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 554; section 180 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1177; section 33 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1227; and section 16 of the Family Allowances Act, 1945; 32 Statutes Supp. 84. See now section 50 of the National Insurance Act, 1946; a section which is the same as this one save for the addition of a subsection (1) empowering the Registrar-General to make regulations for the purposes of this Act and this section.

(a) **Ascertainment and proof of age, marriage or death for the purposes of this Act.**—These are required to be ascertained or proved, for example, by sections 11–35, *ante*.

(b) **Any person.**—This may well be limited in practice to those who can fill in the prescribed requisition form in such a way as to show that they have an interest in the information for which they ask, though in fact the words are "any person shall be entitled".

(c) **Custodian of the register.**—This means every registrar and every person whose duty it is to register marriages (this includes ministers of religion and others). These persons are charged with the custody of registers by the Births and Deaths Registration Act, 1836; 15 Halsbury's Statutes 700; and by later Acts. See, generally, 28 Halsbury's Laws (2nd Edn.) 139.

(d) **Requisition.**—The form of this will be prescribed under subsection (2). In addition a fee has to be paid under paragraph (b).

(e) **Fees for certified copies of entries in register.**—These fees, as under a number of other Acts, are reduced. The ordinary fee is 2s. 6d. (sections 35 and 37 of the Births and Deaths Registration Act, 1836; 15 Halsbury's Statutes 707, 708).

(f) **Form of requisition.**—The form will presumably be that specified by the Registrar-General for the purposes of this Act by regulations made by him. Cf. the Certificates of Births, Deaths and Marriages (Requisition) Regulations, 1937 (S.R. & O. 1937 No. 855). See also the Certificates of Births, Deaths and Marriages (Requisitions) (Registrar-General) Rules, 1935 (S.R. & O. 1935 No. 690, p. 530). As to the Registrar-General, superintendent registrar and registrar, see note (g), *infra*.

(g) **Registrar-General, superintendent registrar and registrar.**—The Registrar-General (see subsection (3)) is appointed by the Crown under the Great Seal and is subject to such regulations as may from time to time be made by the Minister of Health, who also determines his salary with Treasury approval, for the management of the General Register Office. His duties include the general supervision and direction of the registration of births, marriages and deaths in England and Wales. See Births and Deaths Registration Act, 1836, sections 2 and 5; 15 Halsbury's Statutes 700, 701; Local Government Act, 1929, section 25; 10 Halsbury's Statutes 901. Superintendent registrars are appointed by the local council for each registration area (Births and Deaths Registration Act, 1836, section 7; 15 Halsbury's Statutes 701; and other later Acts). Registrars are appointed, in the numbers required for each area, also by the local council responsible (*ibid.*). In the application of this section to Scotland, for any reference to the Registrar-General there shall be substituted a reference to the Registrar-General of births, deaths and marriages in Scotland and references to a superintendent registrar shall be omitted (section 90 (b), *post*).

**64. Exemption from stamp duty.**—Stamp duty shall not be chargeable upon such documents used in connection with business under this Act as are specified in the Sixth Schedule to this Act.

#### NOTES

**General effect of section.**—This section, by reference to the Sixth Schedule, *post*, exempts from stamp duty various documents relating to benefit and contributions and to the supplementary schemes provided for by section 83, *post*. Similar provisions appeared in section 93 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 555; and section 179 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1177. See now section 51 of the National Insurance Act, 1946. The exemption as to receipts was applied to receipts for compensation under the Workmen's Compensation Act, 1925, by section 44 of the Finance Act, 1930; 23 Halsbury's Statutes 511.

For details of the documents affected and for notes on the duties payable, see the Sixth Schedule, *post*.

#### *Insurance stamps and cards*

**65. Regulations as to payment of contributions by stamps, etc.**  
—(1) Subject to the provisions of this Act (a), regulations (b) may provide



for any matters incidental to the payment and collection of contributions under this Act (c), and in particular—

- (a) for payment of contributions by means of adhesive or other stamps (in this Act referred to as "insurance stamps") affixed to or impressed upon cards (in this Act referred to as "insurance cards") or otherwise, and for regulating the manner, times, and conditions in, at and under which insurance stamps are to be affixed or impressed or payments are otherwise to be made (d);
- (b) for the issue, sale, replacement, custody, production and delivery up of insurance cards (e);

and any such regulations relating to the time of payment of contributions may require or authorise an employer, where an insured person's (f) remuneration is paid in advance and in such other cases as may be prescribed (g), to pay contributions in advance and in connection therewith may make provision for the event of contributions so paid proving not to be payable (h).

(2) If provision is made by the regulations aforesaid for the payment of contributions, at the option of the persons liable to pay, either—

- (a) by means of adhesive stamps; or
- (b) by some alternative method, the use of which involves greater expense in administration to the Government departments concerned than would be incurred if the contributions were paid by means of adhesive stamps (i);

a provision may be included in the regulations for the payment to the Minister (k) by any person who adopts the alternative method (l), and for the recovery by the Minister, of such fees as may be determined by the Minister, with the concurrence of the Treasury, to represent the difference between the expenses incurred by the said departments by reason of the fact that the alternative method has been adopted and the expenses which would have been incurred by the said departments if the contributions payable by that person had been paid by means of adhesive stamps (m).

#### NOTES

**General effect of section.**—This section, following the pattern of all social insurance legislation, provides for the payment of contributions by means of stamps on cards. As regards this Act, the intention of the Government, as expressed in paragraph 14 of the Explanatory Memorandum to the Bill as introduced in June, 1945 (Cmd. 6651), is that the contributions both for insurance under this Act and under the National Insurance Act, shall be by one stamp on one card, when both Acts are in operation. The section empowers the making of regulations as to cards and stamps, the issue, sale, replacement, custody, production and delivery up of cards, and provides for employers' contributions being paid in advance where remuneration is paid in advance to an insured person. Provision is also made for the payment of fees where contributions are paid by a method more expensive for the Government to administer than that of stamping cards. The sale of stamps is dealt with in section 66, *post*.

This section is largely modelled on section 15 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 510; and sections 21–23 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1081–1082; see also section 13 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1210.

The corresponding provisions of the National Insurance Act, 1946, are section 8 (2) and (3), which are in a rather shorter form.

Offences relating to stamps and cards are dealt with by section 67, *post*.

(a) **Subject to the provisions of this Act.**—This presumably refers to sections 2–5, *ante*, which relate to contributions generally.

(b) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, that is, under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press.

(c) **Payment and collection of contributions under this Act.**—As to this, see sections 2–5, *ante*, which provide for their payment by both employer and insured person, in the first place by the employer.



(d) **Stamps and cards.**—The regulations will presumably be similar to those made under earlier Acts. See, for example, the Unemployment Insurance (Contributions) Regulations, 1936–1943 (S.R. & O. 1936 Nos. 331, 671, 1156; 1940 No. 1832; 1943 No. 900). See also General note to section 66, *post*. As to the sale of stamps, see that section.

(e) **Issue, etc., of cards.**—Cards will presumably be issued as under earlier Social Insurance Acts, as to which, see, for example, section 15 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 510.

(f) **Employer; insured person.**—As to who are employers and insured persons, see sections 1 and 2, *ante*, and section 80, section 88 and the First Schedule, *post*.

(g) **Prescribed.**—This means prescribed by regulations (section 88 (1), *post*).

(h) **Contributions paid proving not to be payable.**—These, if paid, will have to be refunded. As to receipts on refunds, see section 64, *ante*, and the Sixth Schedule, *post*.

(i) **Alternative method of paying contributions.**—Under the Unemployment Insurance (Contributions) Regulations, 1936 (S.R. & O. 1936 No. 331), Regulation 11, as substituted by the Unemployment Insurance (Contributions) (Amendment) Regulations, 1939 (S.R. & O. 1939 No. 586), Regulation 3, stamps impressed on "impressed stamping books" by machine and die might be allowed by permit granted on application to the Postmaster General and with the consent of the Minister. Such a method need not necessarily involve the Government in greater administrative expense than does the use of cards and stamps, but if it does, an event which seems to be anticipated, fees will be payable. The Government departments concerned would seem to be primarily the Ministry of National Insurance and the Post Office. The Ministry of Labour and National Service might and the Treasury would, also be involved.

(k) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(l) **Any person who adopts the alternative method.**—Probably the employers who will adopt an alternative method will be those who employ a large number of persons. These employers will often be companies and it must be remembered that a body corporate is a "person" in law. A firm, however, is not a "person" apart from the individual partners. They are the "persons". As to offences by bodies corporate, see section 67 (3), *post*.

(m) **Payment and recovery of fees.**—The fees will either be fixed by the Minister for each case according to the circumstances or according to a scale prescribed by regulations, or other directions of the Minister. Treasury concurrence will be by inter-departmental communication. The recovery of fees by the Minister will presumably be under section 70, *post*, unless the regulations provide otherwise.

**66. Issue of insurance stamps.**—(1) Insurance stamps shall be prepared and issued in such manner as the Postmaster-General, with the consent of the Treasury, may direct (a).

(2) The Postmaster-General may by regulations (b) provide for applying with the necessary adaptations, as respects insurance stamps, the provisions (including penal provisions) of the Stamp Duties Management Act, 1891, as amended by any subsequent enactment (c), and section nine of the Stamp Act, 1891, as so amended (d), and section sixty-five of the Post Office Act, 1908, as so amended (e).

(3) The Postmaster-General may provide for the sale of insurance stamps through any Post Office (f).

#### NOTES

**General effect of section.**—This section provides for the preparation and issue of insurance stamps, as to which, see section 65, *ante*, under the direction of the Postmaster-General, and for their sale through any Post Office. This follows the long-established practice of Social Insurance Acts.

The section is modelled almost *verbatim* on section 16 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 511. Section 22 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1082; was in very similar terms. See new section 8 (2) of the National Insurance Act, 1946.

Offences relating to stamps and cards are dealt with by section 67, *post*.

(a) **Preparation and issue of insurance stamps.**—As to what are "insurance stamps", see section 65, *ante*. The Postmaster-General is appointed by His Majesty by letters patent, pursuant to section 33 of the Post Office Act, 1908; 13 Halsbury's Statutes 51. He is the obvious authority, with the experience of his office in these matters, to arrange for the printing and distribution of stamps, subject to Treasury consent as to cost. The printing of adhesive stamps is largely done by contract.

(b) **Regulations of the Postmaster-General.**—These will be made by him



under this section. Cf. the Unemployment Insurance (Stamps) Regulations, 1936 (S.R. & O. 1936 No. 666).

(c) **Stamp Duties Management Act, 1891, as amended.**—For this Act, as amended, see 16 Halsbury's Statutes 609–618 and Statutes Annual Supp. The Act consolidates the law relating to the management of stamp duties, providing for the recovery of money received for duty, the sale of stamps under licences, allowances for spoiled stamps, and the punishment of a number of offences relating to stamps. The Act has been applied to Unemployment and National Health Insurance stamps by various Unemployment Insurance and National Health Insurance Acts. As to the present position, see General note, *supra*. See also section 69, *post*, as to offences under the Act of 1891.

(d) **Stamp Act, 1891, section 9, as amended.**—For this section, see 16 Halsbury's Statutes 620. It provides penalties for frauds in relation to adhesive stamps. It has been applied to Unemployment and National Health Insurance stamps by various Acts. For the present position, see General note, *supra*.

(e) **Post Office Act, 1908, section 65, as amended.**—For this section, see 13 Halsbury's Statutes 64. It provides penalties for making, or dealing in any way with, fictitious stamps or the equipment for making them. It has been applied to National Insurance stamps by section 16 (2) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 511; and by section 22 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1082.

(f) **Sale of insurance stamps.**—The Postmaster-General will presumably provide for this by directions and arrangements within his own department.

"Post Office" includes any house, building, room, carriage or place used for the purpose of the Post Office and any Post Office letter box (Post Office Act, 1908, section 89; 13 Halsbury's Statutes 72). For the purposes of the present section the letter box may safely be ignored.

*Legal proceedings, etc.*

**67. General provisions as to offences and penalties.**—(1) If any person (a)—

- (a) buys, sells or offers for sale (b), takes or gives in exchange (c), or pawns or takes in pawn (d) any insurance card or any used insurance stamp (e); or
- (b) affixes any used insurance stamp to any insurance card (f); or
- (c) for the purpose of obtaining any benefit or other payment under this Act (g), whether for himself or some other person, or for any other purpose connected with this Act (h)—
  - (i) knowingly makes any false statement or false representation (i); or
  - (ii) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular (k);

he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment (l).

(2) Subject to the express provisions of this Act (m), regulations (n) may provide for the recovery on summary conviction of monetary penalties in respect of any offence under this Act, being a contravention of or failure to comply with regulations (not being regulations requiring any person to submit himself to medical treatment), so, however, that such penalties shall not exceed ten pounds for each offence or, where the offence consists of continuing any such contravention or failure after conviction thereof, ten pounds together with a further ten pounds for each day on which it is so continued (o).

(3) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly (p).

(4) In any proceedings under subsection (1) of this section with respect to used stamps, a stamp shall be deemed to have been used if it has been



affixed to an insurance card or cancelled or defaced in any way whatsoever and whether it has actually been used for the purpose of payment of a contribution or not (q).

(5) Nothing in this section shall be construed as preventing the Minister from recovering by means of civil proceedings any sums due to the Industrial Injuries Fund (r).

#### NOTES

**General effect of section.**—This section contains general provisions relating to offences under the Act and to the penalties therefor. Section 68, *post*, contains general provisions as to prosecutions. The offences created by the present section relate to two main matters—illegal trafficking in or using insurance cards or stamps, and proffering false information or documents for the purpose of obtaining benefit. Besides fines, the Act provides for the recovery of monetary penalties for offences. These penalties will be laid down by regulations; apparently they will not be paid into the Industrial Injuries Fund (section 58, *ante*) when recovered but to the Crown generally. Cf. section 70, *post*. They are not, apparently, intended to cover cases where benefit has been improperly obtained and must be repaid. Those will presumably be provided for by regulations made under section 27 (1), *ante*. There is no section corresponding to section 51 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 529; which expressly provided for the repayment of benefit in such cases. Section 52, *ante*, and the Second Schedule, Part III (2) (b), *post*, do not apply here.

Provision is also made for offences committed by bodies corporate through their officers.

Sections 67–72 are closely related and deal with legal proceedings in respect of offences and for the recovery of money due to the fund.

The section embodies provisions similar to those contained in sections 17 and 86 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 511, 529; section 170 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1172; and section 37 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; *ibid.* 1228. The £100 maximum fine, however, is more severe than the maximum fines which could be imposed under those Acts.

See now section 52 of the National Insurance Act, 1946, which is in very similar terms.

(a) **Person.**—This includes a body corporate, as to which, see subsection (3).

(b) **Buys, sells or offers for sale.**—As to the meaning of these terms, see the Sale of Goods Act, 1893, section 1; 17 Halsbury's Statutes 612. Where under a contract of sale the property is transferred from the seller to the buyer the contract is called a sale; but where the transfer is to take place at a future time or subject to some condition being fulfilled the contract is called an agreement to sell, becoming a sale when the time elapses or the condition is fulfilled. Both parties to the bargain are guilty of an offence under the section. An offer for sale is an offer, which, if accepted, will result in a sale or agreement to sell. Cf. an invitation to make an offer. See, generally, 7 Halsbury's Laws (2nd Edn.) 83 *et seq.*

(c) **Takes or gives in exchange.**—This covers contracts of barter, where the consideration for the transfer of goods is not a money price but other goods. Both parties to the bargain will be guilty of an offence under this section. As to barter, see 29 Halsbury's Laws (2nd Edn.) 5.

(d) **Pawns or takes in pawn.**—Both the borrower and the lender are guilty of an offence under the section. As to pawn transactions, see 25 Halsbury's Laws (2nd Edn.) 2 *et seq.*

(e) **Insurance card or used insurance stamp.**—Insurance cards and stamps are defined and dealt with by sections 65 and 66, *ante*. Subsection (4) of this section sets out the circumstances in which a stamp shall be deemed to have been used.

(f) **Affixes any used insurance stamp.**—This amendment brings this Act into line with section 52 of the National Insurance Act, 1946, which is in similar terms, and enables proceedings to be taken as an alternative to proceedings under the Acts mentioned in section 66 (2), *ante*. It was made on the Report Stage. See also subsection (4), which was similarly amended.

(g) **Benefit or other payment under this Act.**—Benefit is payable under Part II, *ante*. An example of an "other payment" is a travelling allowance paid to a witness summoned to a tribunal (see section 53 (2) (c), *ante*).

(h) **Any other purpose connected with this Act.**—For example, for the purpose of obtaining an appointment as an insurance officer or inspector, for which purpose a candidate might misrepresent his qualifications.

(i) **False statement or false representation.**—This, clearly, must be of fact and not of law. It must also be made knowingly, to constitute an offence under this section. Absence of any honest belief in its truth, as in fraud, is not enough. See the remarks as to the general law in note (c) to section 40, *ante*. A representation can be by a document or by an act, for example—showing a bandaged limb which is not



injured, a self-inflicted wound (it is submitted), an assumed limp in walking, or an assumed inability to raise an arm or clench a hand.

(k) **Produces or furnishes, etc., document or information false in a material particular.**—"Produces" covers "documents" and "furnishes" covers "information", that is information not contained in documents. Again observe that knowledge is essential to the offence. "False in a material particular" occurs in various Acts; for example, it is used in the Road Traffic Act, 1934, section 10 (3), (5); 27 Halsbury's Statutes 544-545; in the Wages Councils Act, 1945, section 18; 30 Statutes Supp. 53; and in the Family Allowances Act, 1945, section 9; 32 Statutes Supp. 80; with the variation that, in addition to information known to be false, information which is false and is furnished "recklessly" is brought within the scope of the section. This applies the test of fraud in both its forms. Withholding material information is also an offence under that section. The meaning of "false in a material particular" in section 84 of the Larceny Act, 1861; 4 Halsbury's Statutes 554; was considered in relation to a company prospectus in *R. v. Kylsant*, [1932] 1 K.B. 442; Digest Supp. All the statements in the prospectus were literally true, but the prospectus was held to be false because it omitted to disclose certain facts. That omission made that which was stated absolutely false, when looked at as a whole.

(l) **Fine or imprisonment on summary conviction.**—As to summary conviction, see note (l) to section 62, *ante*.

(m) **Subject to the express provisions of this Act.**—This refers presumably to subsection (5), relating to the recovery of civil debts.

(n) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, that is, under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press.

(o) **Recovery on summary conviction of monetary penalties.**—The recovery of monetary penalties depends on the statute providing therefor, as also does the question whether they go to the individual aggrieved or to the Crown. See 9 Halsbury's Laws (2nd Edn.) 666.

An example of a continuing offence is a failure to pay a contribution due under section 3, *ante*.

In the application of this Act to Scotland this provision has effect as if the word "summary" were omitted (section 90 (c), *post*). As to the meaning of "day", see section 88 (1), *post*.

The amendment excepting regulations requiring any person to submit himself to medical treatment was made on the Report Stage. These regulations will be made under section 25 (2), *ante*. The failure to comply with them is only intended to involve forfeiture of benefit (section 32 (2), *ante*), and this amendment was accordingly necessary.

(p) **Offence by body corporate.**—"Body corporate" means a corporation. It can be a corporation aggregate, which is a collection of individuals united into one body under a special denomination and an artificial form, which makes it a different "person" in law from its members. Examples are corporations created by charter, Act of Parliament or the procedure provided by the Companies Clauses Acts or the Companies Acts. It can also be a corporation sole, which is a body which is constituted in a single person who has for the time being some office or function. Examples are a bishop, and a vicar. As to corporations generally, see 8 Halsbury's Laws (2nd Edn.) 3.

Consent is of course, like connivance, a question of fact in each case, to be inferred from the words and conduct of the person consenting. If the consent were obtained by fraud, it would presumably be nullified. See 29 Halsbury's Laws (2nd Edn.) 115, 116, where "consent" is considered with reference to the sale of goods. Connivance is a term chiefly used in relation to divorce law (see 10 Halsbury's Laws (2nd Edn.) 674). It appears to mean conduct causing or wilfully or recklessly allowing an offence. Negligence means breach of a duty to use reasonable care, whereby damage results, the duty here presumably being owed to the corporation. Note that the consent, connivance or negligence must be "proved", that is—proved beyond all reasonable doubt, since it relates to a criminal offence. "Any director, manager, secretary or other officer" is taken from section 365 (2) of the Companies Act, 1929; 2 Halsbury's Statutes 1001; which provides that the expression "officer who is in default" when used in sections of that Act providing fines or penalties shall include these persons if they "knowingly and wilfully authorise or permit" the default. Cf. "consent or connivance" and "negligence" in this Act.

"Attributable to" means no more than "caused by", "due to" or "resulting in the ordinary course of things from".

For a further discussion of this subject, see Introduction, Part VII, *Legal Proceedings and Offences*, under heading *Offences by bodies corporate*, *ante*.

(q) **Cancellation or defacing of stamps.**—This is usually done by writing or stamping across the stamp the date of the contribution period to which it relates or the date when it was put on the card. The words "affixed to an insurance card or" were added on the Report Stage to conform with subsection (1) (b). See note (f), *supra*.



(r) **Recovery of sums by civil proceedings.**—This is empowered by section 70, *post*. "The Minister" means the Minister of National Insurance (section 88 (1), *post*). As to the Industrial Injuries Fund, see section 58, *ante*.

**68. General provisions as to prosecutions under Act.**—(1) Proceedings for an offence under this Act (a) shall not be instituted (b) except by or with the consent of the Minister (c) or by an inspector or other officer authorised in that behalf by special or general directions of the Minister (d).

(2) Any such inspector or other officer may, although not of counsel or a solicitor, prosecute or conduct before a court of summary jurisdiction any such proceedings as aforesaid (e).

(3) Notwithstanding any provision in any Act prescribing the period within which summary proceedings may be commenced (f), proceedings for an offence under this Act may be commenced at any time within the period of three months from the date on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence (g), comes to his knowledge (h), or within the period of twelve months after the commission of the offence (i), whichever period last expires.

(4) For the purposes of the last foregoing subsection, a certificate purporting to be signed by or on behalf of the Minister as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof (k).

(5) In any proceedings for an offence under this Act, the wife or husband of the accused shall be competent to give evidence, whether for or against the accused :

Provided that the wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused (l).

#### NOTES

**General effect of section.**—This section makes general provision for the conduct of prosecutions under this Act. It provides that proceedings shall not be instituted except with the Minister's consent or by an authorised officer of the Minister. These officers are given the right of audience. Proceedings must be commenced within three months of evidence justifying a prosecution coming to the Minister's knowledge or within twelve months after the offence, whichever is the later. The Minister is given a power of certifying for this purpose. Wives and husbands of persons charged are made competent, but not compellable, witnesses for prosecution or defence.

The section is closely modelled (with one amendment to avoid repeating a solecism) on sections 87 and 89 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 553, 554; and on sections 171 and 175 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1173, 1175. See also section 18 of the Family Allowances Act, 1945; 32 Statutes Supp. 86. See now section 53 of the National Insurance Act, 1946, which is exactly the same as this section.

In the application of this section to Scotland it has effect as if subsections (1) and (2) were omitted and certain modifications were made in subsection (3). See note (g), *infra*, and section 90 (f), *post*.

The Government were urged in Committee to add provisions enabling an employer who is prosecuted to transfer the liability to an employee if the latter is proved to be guilty. Cf. section 16 (2) of the Wages Councils Act, 1945; 30 Statutes Supp. 52; but this was not done.

In the House of Lords subsection (5) was re-drafted so as to conform clearly to the existing law of evidence and to section 53 (5) of the National Insurance Act, *supra*.

(a) **Offence under this Act.**—Offences under this Act are created by sections 3, 4, 62 and 67, *ante*.

(b) **Instituted.**—Proceedings are instituted when an information or complaint is laid or made on which a summons or warrant is granted (*Brooks v. Bagshaw*, [1904] 2 K.B. 798; 14 Digest 155, 1293). See, generally, Stone's Justices' Manual (78th Edn., 1946) 179 *et seq.*, and 21 Halsbury's Laws (2nd Edn.) 594 *et seq.*

(c) **By or with the consent of the Minister.**—This means the Minister of National Insurance (section 88 (1), *post*). It is desirable, if the prosecution is not instituted by an "inspector or other officer", to have a written consent of the Minister, for one of the things requiring proof is the consent, and, if challenged by the defendant, oral evidence of consent may turn out to be inadequate. This subsection does not apply to Scotland (section 90 (f), *post*).

(d) **Inspector or other officer authorised by the Minister.**—As to inspectors, see section 62, *ante*. "Other officer" presumably includes insurance officers (see



section 44, *ante*), and, if authorised, medical practitioners (see sections 38–41, *ante*), and even officers under other Acts (e.g. section 43 (3) (a) of the National Insurance Act, 1946, and police officers if so authorised. The general directions (or the special directions relating to that particular prosecution) should be in writing for the reasons given in note (c), *supra*. Any inspector who conducts a prosecution should also be ready to produce in court his certificate of appointment, as to which, see section 62 (5), *ante*. General directions will presumably not be published as regulations but circulated to all inspectors and other officers.

(e) **Right of audience.**—Formerly the right of audience before courts of summary jurisdiction was confined to the parties themselves or their counsel or solicitors. Other persons might not appear on their behalf. But provisions empowering inspectors and other officers to appear on behalf of Government departments and similar bodies are now common. Note that the right of audience is not confined to the particular officer who instituted the proceedings (*R. v. Northumberland Justices, Ex parte Spicer* (1923), 92 L.J. (K.B.) 621; 44 Digest 1308, 137; a case decided under the Unemployment Insurance Act, 1920, section 23; 20 Halsbury's Statutes 676). As to procedure in courts of summary jurisdiction, see, generally, Stone's Justices' Manual (78th Edn., 1946) and 21 Halsbury's Laws (2nd Edn.) 594 *et seq.* "Prosecute or conduct" is intended to cover appearance in court both as an advocate and as the informant or as a witness for the prosecution. As to the right of audience before tribunals established by this Act, see section 51, *ante*. This subsection does not apply to Scotland (section 90 (f), *post*).

(f) **Provisions in other Acts as to the commencement of summary proceedings.**—As to these, which are numerous and varying, see Stone's Justices' Manual (78th Edn., 1946) Index, p. 101, heading LIMITATION. See also note (d) to section 70, *post*. As to when proceedings are commenced, see note (b), *supra*, the words "commenced" and "instituted" having substantially the same meaning.

(g) **Evidence sufficient to justify a prosecution.**—It will have to be remembered that these charges are criminal, and will have to be proved beyond all reasonable doubt. The Minister is the sole judge in this matter, acting, of course, on advice. This subsection does not, however, appear to prevent an inspector or other officer who has a general direction from the Minister from instituting a prosecution unless the direction given him by the Minister requires that he shall in every case first get the Minister's consent. "Evidence" means legally admissible evidence, for, with the exception of the special provisions in, for example, sections 63 and 67 (4), *ante*, and subsection (4) of this section, the ordinary rules of evidence apply when the case is presented to the court. In the application of this subsection to Scotland, for any reference to sufficient evidence to justify a prosecution substitute a reference to evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of prosecution (section 90 (f), *post*).

(h) **Comes to his knowledge.**—No limitation is put upon the way in which it comes to his knowledge, nor is the Minister bound by the rules of evidence until the case is presented to the court.

(i) **Commission of the offence.**—Some offences are continuing offences; see, for example, section 67 (2) *ante*.

(k) **Minister's certificate to be conclusive evidence.**—It is enough to produce the certificate purporting to be signed by or on behalf of the Minister. It is conclusive evidence of what is stated in it and cannot be challenged. Such certificates are commonly provided for by modern statutes.

(l) **Wife or husband as witness.**—This subsection as originally drafted was much criticised in Committee. The wording was taken from section 4 (1) of the Criminal Evidence Act, 1898; 8 Halsbury's Statutes 251. Those words by themselves might have appeared to make the husband or wife of a person charged not only competent to give evidence but compellable to do so. But it was held in *Leach v. R.*, [1912] A.C. 305; 14 Digest 453, 4800; that a wife was not made compellable by section 4, the wording not being clear enough to override a long-established principle of law. She must therefore be warned before she gives evidence that she is not compellable to do so (*R. v. Acaster* (1912), 106 L.T. 384, C.C.A.; 14 Digest 453, 4805). Section 1 (d) of the 1898 Act; 7 Halsbury's Statutes 249; which enacts that nothing in that Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage, applies to all offences and it was therefore not thought necessary to repeat it in the present subsection. Section 4 only deals with communications made between spouses during the marriage and not to other evidence, e.g., what one spouse saw the other doing, and only applies to certain serious offences specified in the Schedule to that Act; 8 Halsbury's Statutes 253. It was incorporated in this Act and, by reason of *Leach v. R.*, *supra*, decided on words identical in all material particulars, did not, as far as a wife is concerned, make her a compellable witness. The Government undertook, however, in Committee, to reconsider the subsection and amend it should there be real doubt as to whether this was its effect. On the Report Stage the Government assured the House of Commons



that the effect of subsection (5) was to make the wife a competent, but not a compellable, witness (419 H. of C. Official Report 1449).

In the House of Lords, however, the subsection was, in Committee, re-drafted so as to make the position quite clear, to show that there was no intention to depart from the established rules, and to make the subsection conform with section 53 (5) of the National Insurance Act, *supra*. Both subsections may now be regarded as declaratory of the existing law.

**69. Recovery of contributions on prosecutions under Act.—(1)**

In any case where an employer (*a*) has been convicted (*b*) of the offence under Part I of this Act of failing to pay a contribution (*c*), he shall be liable to pay to the Industrial Injuries Fund (*d*) a sum equal to the amount which he failed to pay.

(2) In any case where—

- (a) an employer is convicted of an offence under paragraph (b) of subsection (1) of section sixty-seven of this Act or of an offence under section thirteen of the Stamp Duties Management Act, 1891, as applied by regulations made under this Part of this Act (*e*) or of an offence under regulations made under this Act (*f*); and
- (b) the evidence on which he is convicted shows that the employer, for the purpose of paying any contribution which he was liable to pay, has affixed to any insurance card any used insurance stamp within the meaning of the said paragraph (b) (*g*);

the employer shall be liable to pay to the Industrial Injuries Fund (*h*) a sum equal to the amount of the contribution in respect of which the stamp was affixed.

(3) On any such conviction as is mentioned in either of the last two foregoing subsections, if notice of intention to do so has been served with the summons or warrant (*i*), evidence may be given—

- (a) of the failure on the part of the employer to pay other contributions in respect of the same person during the two years preceding the date of the offence; and
- (b) in the case of any such conviction as is mentioned in subsection (1) of this section, of the failure on his part to pay other contributions during those two years in respect of any other person employed by him;

and on proof of such failure (*k*) the employer shall be liable to pay to the Industrial Injuries Fund a sum equal to the total of all the contributions which he is so proved to have failed to pay.

(4) Where an employer is charged with any such offence as is mentioned in subsection (1) or subsection (2) of this section, and an order is made under subsection (1) of section one of the Probation of Offenders Act, 1907 (*l*), the foregoing provisions of this section shall apply as if the making of the order were a conviction.

(5) Any sum ordered to be paid to the Industrial Injuries Fund under this section shall be recoverable as a penalty (*m*).

(6) Any sum paid by an employer under the foregoing provisions of this section shall be treated as a payment in satisfaction of the unpaid contributions and the insured person's portion of those contributions shall not be recoverable by the employer from the insured person (*n*).

(7) If the employer, being a body corporate (*o*), fails to pay to the Industrial Injuries Fund any sum which the employer has been ordered to pay under this section, that sum, or such part thereof as remains unpaid, shall be a debt due to the Industrial Injuries Fund jointly and severally from any directors of the body corporate who knew, or could reasonably be expected to have known, of the failure to pay the contribution or contributions in question (*p*).

(8) Nothing in this section shall be construed as preventing the Minister from recovering any sums due to the Industrial Injuries Fund by means of civil proceedings (*q*).



NOTES

**General effect of section.**—This section provides in some detail for the recovery of contributions on prosecutions under this Act of employers for failing to pay contributions which they are required to pay under this Act, mainly under Part I, *ante*. This section is modelled on section 18 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 512; as amended by section 9 of the Unemployment Insurance Act, 1939; 32 Halsbury's Statutes 747; and on sections 172 and 173 (2) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1173–1175. The present Act contains no counterpart to section 19 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 513; or to section 174 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1175; which provided that where an insured person lost benefit through his employer's failure to pay contributions that loss should be recoverable from the employer. See *Chadwick v. Pioneer Private Telephone Co., Ltd.*, [1941] 1 All E.R. 522, holding that that section excluded a common law remedy. Under the present Act there will be no loss of benefit in such cases. The section provides for payment to the Industrial Injuries Fund of sums due to that fund. Provision is also made for recovering sums due from employers which are bodies corporate. The rights of the Minister to recover by civil proceedings sums due to the fund are to be unaffected.

Subsection (3) is altered in its application to Scotland by section 90, *post*.

The National Insurance Act, 1946, contains no corresponding section, but section 8 (1) (e), lays down that regulations may provide (without prejudice to any other remedy) for the recovery, on prosecutions brought under or by virtue of that Act, of contributions under that Act or this Act.

(a) **Employer.**—As to who are "employers", see sections 1 and 2, *ante*, and the First Schedule, *post*, and section 80, *post*.

(b) **Convicted.**—This includes an order made under the Probation of Offenders Act. See subsection (4) and note (e) thereto.

(c) **Offence of failing to pay a contribution.**—As to this, see section 3 (4), *ante* (under which an offence can also be committed by an insured person who fails to pay a contribution).

(d) **Liable to pay to the Industrial Injuries Fund.**—This liability is enforceable under subsection (5). As to the Industrial Injuries Fund, see section 58, *ante*. See also note (h), *infra*.

(e) **Offence under section 67 (1) (b) or under the Stamp Duties Management Act, 1891, or under regulations.**—Section 67 (1) (b), *ante*, makes it an offence to traffic in insurance cards or used insurance stamps. As to used stamps, see subsection (4) of that section, *ante*. The Stamp Duties Management Act, 1891, set out in 16 Halsbury's Statutes 609–618, as amended, is to be applied to the present Act, as respects insurance stamps, by regulations made by the Postmaster-General under section 66 (2), *ante*. This paragraph was amended in Committee in the House of Lords to include both Acts, so as to make quite sure that if any person affixes any used insurance stamps to an insurance card the value of the used stamps can be recovered from him on conviction under either section, without recourse to civil proceedings.

(f) **Regulations made under this Act.**—This, by section 88 (1), *post*, means regulations made by the Minister under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this Act at the time of going to press.

(g) **Used stamp affixed by employer.**—This paragraph was amended in Committee in the House of Lords and simplified by reference to section 67, *ante*. As to contributions which the employer is liable to pay, see section 3, *ante*. As to insurance cards and stamps, see section 65, *ante*. As to used insurance stamps, see note (q) to section 67 (4), *ante*. Note that for the purposes of this subsection both (a) and (b) must be proved, and that (b), being an act of dishonesty involved in a criminal charge, must be proved on the evidence beyond all reasonable doubt, including proof that the stamp was a "used insurance stamp" before it was affixed, that it was affixed for the purpose of paying a contribution, and that the contribution was one which he was liable to pay.

(h) **Liable to pay to the Industrial Injuries Fund.**—This liability is enforceable under subsection (5). See also note (d), *supra*.

(i) **Notice served with summons or warrant.**—The form of notice will probably be prescribed by regulations or directed by the Minister. As to summonses and warrants, the latter for the arrest of persons charged, see, generally, Stone's Justices' Manual (78th Edn., 1946) 186–189; 224–225; 21 Halsbury's Laws (2nd Edn.) 602. The summons or warrant is granted on an information, as to which, see generally, Stone's Justices' Manual (78th Edn., 1946) 186 *et seq.*, and 21 Halsbury's Laws (2nd Edn.) 594 *et seq.* See also note (c) to section 70, *post*. In the application of this Act to Scotland this subsection has effect as if for the reference to a summons or warrant there were substituted a reference to a complaint (section 90 (g), *post*).



(k) **Proof of failure to pay contributions.**—The proof required here is not so strict as that required under subsection (2) (b).

(l) **Order under section 1 (1) of the Probation of Offenders Act, 1907.**—For this section, see 11 Halsbury's Statutes 365. It provides that where a court of summary jurisdiction thinks that the charge is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either—(i) dismissing the information or charge; or (ii) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order. The information or charge is often dismissed on payment of the costs of the prosecution.

(m) **Recovery of sums due to the Industrial Injuries Fund.**—Sums recoverable as penalties are recoverable under section 67 (2), *ante*, on summary conviction (on conviction in Scotland (section 90 (c), *post*)).

(n) **Sums recovered from employer to be treated as in satisfaction of unpaid contributions.**—As to the insured person's portion of contributions and the employer's right to recover them, see sections 2, 3 and 5, *ante*.

(o) **Body corporate.**—As to this, see note (p) to section 67, *ante*.

(p) **Directors' liability.**—It is not clear who are intended to be liable in the case of bodies corporate, having no directors, which are employers, for example municipal corporations. Presumably it is not anticipated that such bodies will default in their obligations. The debt is to be joint and several, that is to say, the directors are liable between them to pay the whole debt, though each (or the sole director if there be only one) is severally liable to the Industrial Injuries Fund for the whole debt. Knowledge or reasonable means of knowledge is a question of fact in each case. The degree of proof required in a prosecution is not required here.

(q) **Recovery of sums due to the Industrial Injuries Fund by civil proceedings.**—"The Minister" by section 88 (1), *post*, means the Minister of National Insurance. The remedy by way of civil proceedings is made alternative, or additional so long as the same sum is not recovered twice, to the remedy by way of penalty under subsection (5). As to civil proceedings by the Minister, see section 70 (1), *post*.

**70. Civil proceedings to recover sums due to industrial Injuries Fund.**—(1) All sums due to the Industrial Injuries Fund under this Act (a) shall be recoverable as debts due to the Crown (b), and without prejudice to any other remedy may be recovered by the Minister summarily as a civil debt (c).

(2) Proceedings for the summary recovery as civil debts of sums due to the Industrial Injuries Fund may, notwithstanding anything in any Act to the contrary, be brought at any time within three years from the time when the matter complained of arose (d).

(3) Proceedings for the summary recovery as civil debts of sums due to the Industrial Injuries Fund may be instituted (e) by an inspector or other officer authorised in that behalf by special or general directions of the Minister (f), and any such inspector or officer may, although not of counsel or a solicitor, conduct such proceedings (g).

#### NOTES

**General effect of section.**—This section makes all sums due to the Industrial Injuries Fund recoverable as debts due to the Crown, and recoverable summarily as civil debts within three years from the time when the matter complained of arose. The prosecution may be instituted and conducted by an inspector or other officer. This procedure is without prejudice to any other remedy, for example, where it is available, recovery by civil action for "money had and received" or, if it applies, which is doubtful, recovery as a penalty under section 67 (2), *ante*.

The section is closely modelled (with one amendment to avoid repeating a solecism) on section 88 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 553; and also, to some extent, on section 173 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1174. Cf. also section 8 (5) of the Family Allowances Act, 1945; 32 Statutes Supp. 80. Section 54 of the National Insurance Act, 1946, is in the same words except for references to the National Insurance Fund.

(a) **Sums due to the Industrial Injuries Fund under this Act.**—As to the fund and what contributions are to be paid into it, see section 58, *ante*. As to sums due to the fund other than contributions paid in the ordinary course, see section 69, *ante*.



(b) **Recoverable as debts due to the Crown.**—By section 4 of the Administration of Justice (Miscellaneous Provisions) Act, 1933; 26 Halsbury's Statutes 641; any debt due to the Crown may, without prejudice to the recovery thereof by means of an information in the High Court, be recovered by proceedings instituted by writ of summons, and may also be instituted in a County Court in cases within the jurisdiction. For the procedure in the High Court, see R.S.C. Order 68, Rule 5; Annual Practice, 1945, 1592B. For the procedure in the County Court, see sections 47 (6), 75 (1) and (2) and 193 (4) and the Fifth Schedule of the County Courts Act, 1934; 27 Halsbury's Statutes 113, 127, 178, 193; County Court Practice, 1946. As to the recovery of Crown debts by Latin or English information, see 9 Halsbury's Laws (2nd Edn.) 659-682.

(c) **Recovered by the Minister summarily as a civil debt.**—This method of recovery is to be without prejudice to any other remedy, set out in note (b), *supra*. The summary recovery of civil debts is a procedure created by statute. Various statutes provide for the recovery of civil debts in this way; the procedure for it is laid down in sections 6, 7 and 35 of the Summary Jurisdiction Act, 1879; 11 Halsbury's Statutes 325, 342. The procedure is by way of complaint and not information, a complaint being the appropriate way of having a person brought before the Court and ordered to pay money or do some act, while an information is the appropriate procedure when an offence, punishable by fine, imprisonment or otherwise, is alleged. As to the law generally, see Stone's Justices' Manual (78th Edn., 1946) 62, 179; 21 Halsbury's Laws (2nd Edn.) 594, 632.

Cf. *Chadwick v. Pioneer Private Telephone Co., Ltd.*, [1941] 1 All E.R. 522; a case decided on section 174 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1175; in which STABLE, J., held that as the section contained no provision that the summary recovery as a civil debt of benefit lost by the employer's default in paying contributions was without prejudice to other remedies, summary recovery was the only remedy.

In the application of this subsection to Scotland it is to have effect as if the word "summarily" were omitted (section 90 (c), *post*).

(d) **Notwithstanding anything in any Act to the contrary, proceedings to be within three years.**—The general rule in courts of summary jurisdiction, where no statute expressly provides otherwise, is that an information or complaint must be laid or made within six months from the time when the subject-matter of the proceedings arose (Summary Jurisdiction Act, 1848, section 11; 11 Halsbury's Statutes 278). Section 68 (3), *ante*, does not affect this provision. The periods there laid down only apply to prosecutions for offences, not to the recovery of civil debts. Three years was the period in the sections of the Unemployment and National Health Insurance Acts referred to in the General note to this section, *supra*, and now also is the period in section 54 (2) of the National Insurance Act, 1946. The period in section 8 (5) of the Family Allowances Act, also there referred to, is twelve months; that section relates to the recovery by the Minister of over-paid allowances. The Limitation Act, 1939, by section 32 thereof; 32 Halsbury's Statutes 244; does not apply where other statutes fix a limitation period and in any case only applies to "actions or arbitrations".

The time when the matter complained of arose is when the money became due to the fund under the particular provision of this Act under which it is claimed. The cause of complaint must be complete (*Corbett v. Badger*, [1901] 2 K.B. 278; 26 Digest 518, 2204).

In the application of this subsection to Scotland it is to have effect as if the word "summary" were omitted, and nothing in this subsection shall be construed as limiting the period within which proceedings for the recovery of any sum may be brought (section 90 (c) and (h), *post*).

(e) **Institution of proceedings.**—As to when proceedings are "instituted", see note (b) to section 68, *ante*.

(f) **Inspector or other officer authorised by the Minister.**—As to this, see note (d) to section 68, *ante*.

(g) **Right of audience.**—As to this, see note (e) to section 68, *ante*, but note the different wording of the two subsections. This subsection is limited to "conducting" proceedings.

## 71. Priority of contributions in winding up and bankruptcy.—

(1) Sections seventy-eight, two hundred and sixty-four and two hundred and ninety-eight of the Companies Act, 1929 (which relate to the debts of a company which are to be paid in priority to other debts) (a) shall have effect as if this Act were included among the enactments mentioned in paragraph (e) of subsection (1) of the said section two hundred and sixty-four (b).

(2) (c) Subsection (1) of section thirty-three of the Bankruptcy Act, 1914 (d), shall have effect as if at the end thereof there were inserted the following paragraph:—



" (f) all amounts due, in respect of contributions payable during the twelve months before the date of the receiving order (e), by the bankrupt as the employer (f) of any persons under the National Insurance (Industrial Injuries) Act, 1946 " (g).

#### NOTES

**General effect of section.**—This section includes contributions payable under this Act in those sections of the Companies Act, 1929 and the Bankruptcy Act, 1914, which set out a list of payments which are to be paid as priority debts in winding up and bankruptcy, winding up being the liquidation process as applied to companies and bankruptcy being the liquidation process as applied to firms (partnerships) and individuals. These payments are also made priority debts in proceedings consequent on a debenture holder's action, in addition to winding-up proceedings. The principal payments which are already made priority debts by those sections are rates and taxes, Widows', etc. Pensions contributions payable under the Widows', etc. Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1198; Unemployment Insurance contributions (included by section 20 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 513), National Health Insurance contributions (included by section 177 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1176). Workmen's Compensation payable by an employer was included in section 264 of the Companies Act by section 7 (3) of the Workmen's Compensation Act, 1925, as amended or repealed by section 381 and Schedule XII of the Companies Act, 1929 (see Willis 223 and 2 Halsbury's Statutes 1007, 1053), but is excluded again by section 89 (1) and the Ninth Schedule, *post*. See generally on the subject as it affects Workmen's Compensation, Willis 223, 231–235. By section 18 of the Reinstatement in Civil Employment Act, 1944; 37 Halsbury's Statutes 374; sums ordered to be paid by employer to employee as compensation under section 11 of that Act; *ibid.* 370; are included among these priority debts.

Section 55 of the National Insurance Act, 1946, corresponds to this section, subsection (1) being the same and subsection (2) adding to the provision inserted by this section a further provision including contributions due under that Act.

Certain alterations are required in the section as it applies to Scotland (section 90 (j), *post*).

(a) **Sections 78, 264 and 298 of the Companies Act, 1929.**—For these sections, see 2 Halsbury's Statutes 821, 945 and 969. Section 78, which is set out in Willis at p. 232, so far as is relevant applies to proceedings in consequence of a debenture holder's action. Section 264, set out in Willis at p. 231, in so far as it concerns Workmen's Compensation, applies to the winding-up of companies, while section 298 applies corresponding provisions specially relating to the stannaries.

See the General note, *supra*, and the notes in Willis 231–235. See also 5 Halsbury's Laws (2nd Edn.) 684.

(b) **Enactments mentioned in section 264 (1) (e) of the Companies Act, 1929.**—For this paragraph, see 2 Halsbury's Statutes 945, 947. They are the enactments set out in the General note, *supra*.

(c) **Application to Scotland.**—In the application of this Act to Scotland this section has effect as if for subsection (2) there were substituted the following subsection:—

" (2) Subsection (1) of section one hundred and eighteen of the Bankruptcy (Scotland) Act, 1913 shall have effect as if at the end thereof there were inserted the following paragraph—

' (f) all sums due in respect of contributions payable during the twelve months before the said date by the bankrupt as the employer of any persons under the National Injuries (Industrial Insurance) Act, 1946 '."

See section 90 (j), *post*. For notes, see notes (e), (f) and (g), *infra*.

(d) **Section 33 (1) of the Bankruptcy Act, 1914.**—For this subsection, see 1 Halsbury's Statutes 638. It also sets out the same list of payments, which are to be priority debts. See General note, *supra*, and the notes in Willis 231–235. See also 2 Halsbury's Laws (2nd Edn.) 138, 171, 289.

(e) **Contributions payable during the twelve months before the date of the receiving order.**—As to contributions, see sections 2–5, *ante*. As to the receiving order, which is made on the hearing of the bankruptcy petition, see sections 3–7 of the Bankruptcy Act, 1914; 1 Halsbury's Statutes 606–610. The period of twelve months is also fixed in respect of rates, and National Insurance contributions. In respect of taxes the date is April 5th next preceding the date of the receiving order; in respect of wages shorter periods are fixed.

(f) **By the bankrupt as employer.**—As to the stage at which a debtor is adjudged bankrupt, see section 18 of the Bankruptcy Act, 1914; 1 Halsbury's Statutes 619. As to who are "employers", see sections 1 and 2, *ante*, and section 80 and the First Schedule, *post*.



(g) **National Insurance (Industrial Injuries) Act, 1946.**—This is the short title of this Act, which is given to it by section 91 (1), *post*. The long title is set out at the beginning of the Act, *ante*.

**72. Decisions to be conclusive for purposes of proceedings under Act.**—(1) In any proceedings—

(a) for an offence under this Act (a) ; or  
(b) involving any question as to the payment of contributions under this Act (b) ; or  
(c) for the recovery of any sums due to the Industrial Injuries Fund (c) ;  
the decision of the Minister on any question which under this Act is required to be determined by him subject to an appeal on a question of law to the High Court (d) shall, unless such an appeal is pending or the time for so appealing has not expired (e), be conclusive for the purpose of those proceedings (f).

(2) In any such proceedings as aforesaid—

(a) the decision of the Minister on any question which under this Act is required to be determined in like manner as a corresponding question arising under the Family Allowances Act, 1945 (g), shall, unless the question has been referred under subsection (2) of section five of that Act or the time for applying for such a reference has not expired, be conclusive for the purpose of those proceedings (h) ; and  
(b) where the question has been so referred, the decision of the referee or referees shall be conclusive as aforesaid unless a case has been stated for the decision of the High Court under proviso (b) to the said subsection (2) or the time for applying for such a case to be stated has not expired (i).

(3) If such a decision of the Minister has not been obtained and the decision of any such question is necessary for the determination of the proceedings, the question shall be referred to the Minister for determination as required by this Act (k).

(4) Where any such appeal is pending, or any such application for a reference or for a case to be stated has been made, or the time for so appealing or making such an application has not expired, or where any question has been referred to the Minister as aforesaid, the court dealing with the case shall adjourn the proceedings until such time as a final decision on the question has been obtained (l).

**NOTES**

**General effect of section.**—This section provides that the decision of the Minister in various kinds of proceedings is to be conclusive on any question which is required to be referred to him, subject to the right of appeal to the High Court on a question of law. It is similarly to be conclusive if it is determined under the Family Allowances Act (questions relating to children), subject to a case being stated for the decision of the High Court. Provision is made for adjournment pending the hearing of an appeal.

The section is closely modelled on section 85 of the Unemployment Insurance Act, 1935 ; 28 Halsbury's Statutes 552 ; with the addition of subsection (2), and less closely on section 176 of the National Health Insurance Act, 1936 ; 29 Halsbury's Statutes 1176.

Section 43 (6) of the National Insurance Act, 1946, corresponds to this section but is not so detailed. It is an enabling section under which regulations may be made.

(a) **Proceedings for an offence under this Act.**—As to these, see sections 3 and 4 (contributions), 62 (obstructing, etc., inspectors), and 67 (various offences relating to stamps, cards, false statements, etc.), *ante*. Section 68, *ante*, contains general provisions for prosecutions. See also section 69, *ante*, for the recovery of contributions on prosecutions.

(b) **Proceedings involving any question as to the payment of contributions under this Act.**—These questions may be involved in any of the proceedings mentioned in note (a), *supra*, or in civil proceedings under section 70, *ante*.

(c) **Proceedings for the recovery of any sums due to the Industrial Injuries Fund.**—As to these, see sections 67 (5), 69 and 70, *ante*. As to the fund, see section 58, *ante*.



(d) **Decision of the Minister on any question required to be determined by him subject to an appeal on a question of law to the High Court.**—"The Minister" means the Minister of National Insurance (section 88 (1), *post*). Questions required to be determined by him are those set out in section 36 (1) (a), *ante*, and are some of the "special questions" (see section 36 (5), *ante*). Appeals on questions of law to the High Court are regulated by section 37, *ante*.

(e) **Time for appealing.**—This is to be provided for by rules of court made under section 37 (2), *ante*.

(f) **Conclusive for the purpose of these proceedings.**—The decision will therefore bind any claimant or beneficiary who is affected by it.

(g) **Determination of question under Family Allowances Act, 1945.**—Certain questions, being some of the "special questions" (see section 36 (5), *ante*) are required by section 36 (1) (b) and (4), *ante*, to be determined under that Act, that is under section 5; 32 Statutes Supp. 77; by the Minister, with a right of reference to one or more referees. The questions relate to who is a "child" and what is a "family including a child or children" for the purposes of Part II of this Act.

(h) **Reference under section 5 (2) of the Family Allowances Act, 1945.**—For this subsection, see 32 Statutes Supp. 77. The time for applying is prescribed by the Regulations made under the subsection. See the Family Allowances (References) Regulations, 1946 (S.R. & O. 1946 No. 139). The time prescribed is twenty-eight days after the date of the notice of the award (*ibid.*, Regulation 3 (2)). As to "conclusive for the purpose of those proceedings", see note (f), *supra*.

(i) **Case stated for decision of High Court under section 5 (2) proviso (b) of the Family Allowances Act, 1945.**—For this, see 32 Statutes Supp. 77. It applies section 9 of the Arbitration Act, 1934; 27 Halsbury's Statutes 32; with the substitution for references to an arbitrator and his award of references to a referee or referees and to his or their decision. The application for such a case to be stated may apparently be made at any time before an award is made. See generally, Halsbury's Laws (2nd Edn.) 657.

(k) **Question to be referred to Minister.**—As to this procedure, see sections 36 (1) and 51 (1) (a), *ante*.

(l) **Court to adjourn proceedings pending appeal.**—Any court, civil or criminal is required to adjourn proceedings. As to what decisions are final, see sections 37 (5), *ante* (High Court), and section 5 (2) of the Family Allowances Act, 1945; 32 Statutes Supp. 77 (referee or referees). As to the effect of a "final" decision, see note (i) to section 37, *ante*. Section 9 (3) of the Arbitration Act, 1934; 27 Halsbury's Statutes 32; refers to a "decision" of the court under that section being deemed to be a judgment of the court within the meaning of section 27 of the Supreme Court of Judicature (Consolidation) Act, 1925; 4 Halsbury's Statutes 159; so that it is clearly a "final decision" within the present subsection.

## PART VI

### MISCELLANEOUS AND GENERAL

#### *Prevention of accidents and after-care of injured persons*

73. **Research.**—(1) The Minister (a) may promote research into the causes and incidence of, and methods of prevention of, accidents, injuries and diseases against which persons are insured under this Act or which it is contemplated might be prescribed for the purpose of Part IV of this Act (b), either by himself employing persons to conduct such research or by contributing to the expenses of, or otherwise assisting, other persons engaged in such research.

(2) The Minister may pay to persons employed by him as aforesaid such salaries or remuneration, and such travelling and other allowances, as he may with the consent of the Treasury determine (c).

### NOTES

**General effect of section.**—This section is the first of the Miscellaneous and General sections which form Part VI of the Act. Together with sections 74 and 75, *post*, it empowers the Minister to take various steps for the prevention of accidents and after-care of injured persons. This section gives the power to promote research into the causes and incidence of, and methods of prevention of, accidents, injuries, and diseases against which persons are insured under this Act or which might be prescribed under Part IV as industrial diseases and injuries. He is also given the necessary consequential powers of employing or assisting persons to conduct research and of paying them.

The provision is new. It is not found either in the Workmen's Compensation Acts or the other statutes on which the present Act is modelled, though there was a



section (section 100) in the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 560; empowering the Minister to assist schemes for promoting greater regularity of employment. One criticism of the Workmen's Compensation Acts was that the system gave no attention to the prevention of accidents or after-care of the injured. See, for example, paragraph 79 (ix) of the report by Sir William Beveridge on Social Insurance and Allied Services, dated November, 1942 (Cmd. 6404). This criticism and the consequential recommendations were accepted by the Government in paragraph 24 (iii) of the White Paper on Social Insurance, Part II, dated September, 1944 (Cmd. 6551), and are now embodied in these three sections. This brings industrial injuries and diseases for this purpose into line with disablement due to war service, as to which see Part IV—TREATMENT AND REHABILITATION, of the Royal Warrant relating to Service Pensions (Cmd. 6799), dated April, 1946.

An example of the kind of thing which the Minister will be able to do under these sections is afforded by the Report on the Provision of Employment in South Wales for Persons suspended from the Mining Industry on Account of Silicosis and Pneumoconiosis, dated December, 1945 (Cmd. 6719), and discussed in notes (i) and (k) to section 57, *ante*. Anxiety was expressed in Committee whether the Minister would consult all those bodies which ought to be consulted in order to ensure the co-ordination of research, and Government assurances were given that this would be done, the Minister having clearly a complete discretion as to whom he shall consult. Very wide powers are given, covering all accidents and any of the numerous forms of injury or disease which might at any time be prescribed under Part IV. "Contemplated" presumably means contemplated by any Government department or advisory body which the Minister might consult, such as the Ministries of Labour and National Service, Health and Pensions, the Home Office, the Board of Trade, the Medical Research Council or the Industrial Health Research Board.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **Accidents, injuries and diseases insured against under this Act or prescribed under Part IV.**—As to what are "accidents", see notes (e) and (g) to section 1, *ante*, and the cases collected in Willis, at pp. 8–20. As to "injuries", see note (e) to section 1, *ante*, and the cases set out in Willis at pp. 8–14. As to diseases, and injuries not caused by accident, which are to be prescribed under Part IV, see sections 55–57, *ante*. "Prescribed" means prescribed by regulations (section 88 (1), *post*).

(c) **Payment of persons engaged in research.**—Similar provisions as to payment appear in earlier sections, namely sections 2, 25, 53, 56, 60, 61 and 62, *ante*. Note that this subsection does not provide for the inclusion in the allowances of compensation for loss of remunerative time; cf. section 53 (3), *ante*. In the Bill as originally presented this section also contained a subsection providing that the expenses of the Minister should be paid out of the Industrial Injuries Fund (constituted under section 58, *ante*). This power is included in the general power to pay his expenses out of that fund given to the Minister by section 60 (2), *ante*, and so a special subsection is unnecessary. The consent of the Treasury will be given by inter-departmental communication. The fund is the only available source of money for this purpose.

**74: Vocational training, industrial rehabilitation, etc.**—(1) The Minister (a) may make arrangements with the Minister of Labour and National Service (b) for securing that persons entitled to disablement benefit (c) may take full advantage of vocational training courses, industrial rehabilitation courses, and facilities in connection with employment or work under special conditions, provided under the Disabled Persons (Employment) Act, 1944 (d), and may make towards the cost of providing those courses and facilities such contributions as he may, with the consent of the Treasury, determine (e).

(2) Any contribution under the foregoing subsection shall be paid out of the Industrial Injuries Fund (f).

#### NOTES

**General effect of section.**—This section is also new and is closely linked with sections 73, *ante*, and 75, *post* (see General note to section 73, *ante*). It gives the Minister the power to make the necessary arrangements for vocational training, industrial rehabilitation, etc., and to make contributions towards the cost. As to the general relationship between the Disabled Persons (Employment) Act, 1944, and this Act, see Introductory Note to Part VIII of the General Introduction, *ante*.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **Arrangements with the Minister of Labour and National Service.**—These arrangements will presumably be made by inter-departmental discussion and



communication. The Minister of Labour and National Service is appointed under section 1 of the New Ministries and Secretaries Act, 1916; 3 Halsbury's Statutes 413. See also the powers given to Ministers by the Ministers of the Crown Act, 1939; 32 Halsbury's Statutes 1031; under section 1 of which; *ibid.* 1032; the Minister of National Service Order, 1939, was made (S.R. & O. 1939 No. 1118), applying the Act to the Minister of National Service and empowering the same Minister to exercise the functions both of the Minister of Labour and of the Minister of National Service.

(c) **Disablement benefit.**—As to this, see sections 7 and 12–18, *ante*.

(d) **Training, rehabilitation and facilities under the Disabled Persons (Employment) Act, 1944.**—For this Act, see 37 Halsbury's Statutes 346–362. Vocational training courses are provided under section 2; *ibid.* 348. Industrial rehabilitation courses are provided under section 3; *ibid.* Facilities in connection with employment or work under special conditions are provided under section 15; *ibid.* 357. See also section 16; *ibid.* 358; which requires preference to be given to ex-service men and women, as therein defined. By section 25 (2) (c) of the present Act, *ante*, claimants and beneficiaries may be required to attend courses, with the liability to forfeiture of benefit if they fail without reasonable cause to do so (section 32 (2) (a), *ante*).

(e) **Contributions to cost of courses and facilities.**—The cost of these courses and facilities is primarily to be defrayed under sections 5 and 15 (6) of the Disabled Persons (Employment) Act, 1944; 37 Halsbury's Statutes 349, 357–8. The consent of the Treasury will be given by inter-departmental communication. The Minister's contribution is to come out of the Industrial Injuries Fund (see subsection (2)).

(f) **Contributions to be paid out of Industrial Injuries Fund.**—A similar subsection was included in the original Bill in section 73, *ante*, but was removed, being unnecessary because section 60 (2), *ante*, already empowers such payment. The provision would appear to be unnecessary both in this section and in section 75, *post*, but it has been retained. The Industrial Injuries Fund is constituted under section 58, *ante*.

**75. Provision of artificial limbs, etc.**—(1) The Minister (a) may make arrangements to secure the provision and maintenance, free of charge or at a reduced charge (b), of equipment and appliances for any person who, by reason of the loss of a limb or otherwise (c), is in need of them as the result of any injury or disease against which he was insured under this Act (d), and in connection with the provision or maintenance of any equipment or appliances for any person under this section may pay to that person such expenses incurred by him as the Minister may determine (e).

(2) Any expenses incurred by the Minister under any such arrangements or otherwise under this section shall be paid out of the Industrial Injuries Fund (f).

## NOTES

**General effect of section.**—This section is also new and is closely linked with sections 73 and 74, *ante* (see General note to section 73, *ante*). It provides that the Minister may make arrangements to provide and maintain, free or at a reduced charge, artificial limbs or appliances needed by injured or diseased persons and may pay any consequent expenses. The provision and maintenance of equipment and appliances will presumably in most cases be arranged with existing hospitals, clinics, etc.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **Free of charge or at a reduced charge.**—The payment of the expenses is provided for by subsection (2). If the equipment or appliances are provided and maintained at a reduced charge the balance will have to be paid by the insured person. The hope was expressed in Committee that this would not mean that hospital almoners would have to approach a person's approved society or sick lodge for a contribution. Presumably no charge will be made unless the insured person is able to pay something. The provision and maintenance of the equipment and appliances is clearly additional to and without prejudice to benefit received under Part II of this Act, *ante*.

(c) **Equipment and appliances.**—This includes splints, crutches, artificial limbs, wheeled chairs and the like. The main emphasis of the section is on the loss of limbs, but the words "or otherwise" cover any injury or disabled condition.

(d) **Need of equipment and appliances.**—The determination of this need, though not included among the "disablement questions" set out in section 36 (1) (c), *ante*, will presumably be for a medical board or medical appeal tribunal or single doctor on reference under sections 39 and 41, *ante*, which does not say that only the disablement questions shall be so referred. Each case will be referred in this way and the recommendation for equipment or appliances will be made while the board or tribunal are still dealing with the case.

(e) **Payment of expenses.**—These will be paid to the insured person if he has



had to incur them himself. There is nothing in the section, however, to prevent the Minister paying the supplying institution direct if the insured person has incurred no liability. As to the fund out of which payment is to be made, see subsection (2).

(f) **Expenses to be paid out of Industrial Injuries Fund.**—A similar subsection was included in the original Bill in section 73, *ante*, but was removed, being unnecessary because section 60 (2), *ante*, already empowers such payment. The provision appears to be unnecessary both in this section and in section 74, *ante*, but it has been retained. As to the Industrial Injuries Fund, see section 58, *ante*.

### *Special classes of persons*

**76. Persons employed by or under the Crown.**—This Act shall apply to persons employed by or under the Crown (a) to whom this Act would apply if the employer were a private person (b), subject however to such modifications as may be made therein by Order in Council for the purpose of adapting the provisions of this Act to the case of such persons (c) :

Provided that employment in the naval, military or air force service of the Crown (d) and any other prescribed employment under the Crown (e) shall be excepted employments (f).

### NOTES

**General effect of section.**—This section is the first of several dealing with special classes of persons. It is to be read particularly with section 1, *ante*, and the First Schedule, *post*, which deal with insurable employment. It applies the Act to persons employed by or under the Crown if they would be in insurable employment but for that fact. Persons employed in the armed forces are excepted from the Act. Other classes of employment under the Crown may also be excepted.

This section is similar in effect to section 33 of the Workmen's Compensation Act, 1925; Willis 556. The wording of the section is the same as that of section 94 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 555. The wording of the proviso to that section is different from that of the proviso to this section, referring only to permanent or probationary Crown or Civil servants. Members of the Royal Forces, etc., are dealt with by sections 95 *et seq.*, *ibid.*

Section 185 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1181; was similar in wording and effect to section 33 of the Workmen's Compensation Act, 1925, *supra*. Members of the Reserve Forces were dealt with by section 186; 29 Halsbury's Statutes 1181. Section 18 (1) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; *ibid.* 1215; applied that Act to Crown servants in the same manner and to the same extent.

Now, section 56 of the National Insurance Act, 1946, corresponds with this section, though the wording is different. It contains no proviso. Members of the forces are dealt with in section 57.

(a) **Persons employed by or under the Crown.**—References to the Crown in any Act, unless the contrary intention appears, are to be construed as references to the Sovereign for the time being (Interpretation Act, 1889, section 30; 18 Halsbury's Statutes 1003). As to the attributes of the Sovereign, see 6 Halsbury's Laws (2nd Edn.) 435 *et seq.* As to the position of Crown servants, including their responsibility for acts done as such, see *ibid.*, 488 *et seq.*, 608. *Prima facie* the expression includes all servants of the Crown, but the proviso excludes persons in the armed forces and in other prescribed employments. See notes (d) and (e), *infra*.

(b) **To whom this Act would apply if the employer were a private person.**—As to such employments, see section 1, *ante*, and section 80 and the First Schedule, *post*. "Private person" is not defined but clearly includes any legal "person", that is an individual or body corporate (as to which see note (p) to section 67, *ante*), other than the Crown. The expression must not of course be confused with a "private company" (see section 26 of the Companies Act, 1929; 2 Halsbury's Statutes 789).

(c) **Modifications by Order in Council.**—As to Orders in Council generally, see 6 Halsbury's Laws (2nd Edn.) 594. As to the making of Orders under this Act, see section 86, *post*. No Order has been made under this section at the time of going to press.

(d) **Employment in the naval, military or air force service of the Crown.**—As to this generally, see 28 Halsbury's Laws (2nd Edn.) 541 *et seq.*

(e) **Any other prescribed employment under the Crown.**—"Prescribed" means prescribed by regulations (section 88 (1), *post*). In section 94 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 555; permanent or probationary Civil servants were expressly excepted. The present Act includes all Crown servants in the general provisions of this section, except those serving in the Royal Forces, and gives power to except others by regulations. As to regulations, see sections 86 and 87, *post*. As to Civil servants generally, see 6 Halsbury's Laws (2nd Edn.) 676 *et seq.*



(f) **Excepted employments.**—This means employments which are not insurable employments (section 1, *ante*, and the First Schedule, Part II, *post*).

**77. Mariners and airmen.**—(1) The Minister (a) may make regulations (b) modifying in such manner as he thinks proper the provisions of this Act in their application in relation to—

- (a) persons who are insured persons by virtue of paragraphs 2, 3 and 4 of Part I of the First Schedule to this Act (hereafter in this section referred to as “mariners”);
- (b) persons who are insured persons by virtue of paragraph 5 of the said Part I (hereafter so referred to as “airmen”) (c).

(2) Any such regulations may in particular, without prejudice to the generality of the foregoing subsection, provide—

- (a) for excepting from insurance mariners or airmen who neither are domiciled nor have a place of residence in the United Kingdom (d) or for exempting from payment of contributions (e) any such mariner or airman, and for excluding from benefit (f) any mariner or airman who is so exempted;
- (b) in the case of a mariner who is employed as master or a member of the crew of a fishing vessel and is remunerated in whole or in part by a share in the profits or gross earnings of the fishing vessel, for the removal of the restriction of the right of deducting or otherwise recovering the employer's contribution in respect of him (g);
- (c) for the payment of benefit to mariners and airmen in respect of accidents happening, and prescribed diseases and injuries contracted or received, while they are outside Great Britain (h);
- (d) for treating as accidents arising out of and in the course of the employment of a mariner or airman accidents happening while he is proceeding to or from his ship, vessel, or aircraft or in any other prescribed circumstances (i);
- (e) for the taking of evidence, for the purpose of any claim by a mariner or airman to benefit—
  - (i) in any part of His Majesty's dominions, before a judge or magistrate or by a superintendent within the meaning of the Merchant Shipping Act, 1894 (k);
  - (ii) in a foreign country, by a British consular officer (l);
- (f) for withholding any benefit that may be payable to a mariner for any period during which the owner of his ship or vessel is under a statutory obligation to pay him wages (m);
- (g) for enabling a mariner or airman to authorise the payment of the whole or any part of any benefit to which he is or may become entitled to such of his dependants as may be prescribed (n).

(3) Where a mariner is exempt from payment of contributions by virtue of this section, the contributions payable in respect of him by his employer (o)—

- (a) shall not be taken into account for the purpose of estimating the contributions to be paid out of moneys provided by Parliament (p);
- (b) shall be administered and applied in such manner and for such purposes as may be prescribed;

and regulations made for the purposes of paragraph (b) of this subsection may provide for applying, with or without modifications, to any fund into which those contributions are to be paid any provisions of Part V of this Act relating to the recovery of contributions as they apply to the Industrial Injuries Fund (q).

(4) Any regulations making the provision mentioned in paragraph (c) of subsection (2) of this section may be extended—



- (a) so far as they relate to mariners, to any person who, in the course of his employment as an apprentice pilot, is on board any ship or vessel, whether or not he is a mariner within the meaning of this section (r);
- (b) so far as they relate to airmen, to any person who, in the course of insurable employment, is on board an aircraft on a test flight starting in Great Britain, whether or not he is an airman within the meaning of this section (s).

### NOTES

**General effect of section.**—This section empowers the Minister to make regulations modifying the provisions of the Act in their application to mariners and airmen, two classes of persons defined in Part I of the First Schedule, *post*. The regulations are to deal particularly with contributions and benefit in respect of persons abroad, share fishermen, accidents happening on the way to or from work, taking evidence abroad and the withholding of benefit or payment of benefit to dependants. Provision is also made for cases where mariners are exempt from the payment of contributions. Mariners include apprentice pilots, and persons on test flights from Great Britain are included.

By section 7 (3), *ante*, benefit is not payable in respect of an accident happening while the insured person is outside Great Britain, a provision which expressed to be subject to the provisions of this Act relating to persons on ships and aircraft, that is—to this section.

Sections 35 and 36 of the Workmen's Compensation Act, 1925; Willis 557, 571; dealt with persons employed in ships and aircraft employed abroad. Section 39; Willis 574; gave power to detain ships in certain circumstances. Section 16; Willis 461; dealt in general with workmen residing abroad.

Section 98 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 559; and section 19 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1215; gave powers to modify those Acts as they apply to seamen. Section 58 of the National Insurance Act, 1946, corresponds to this section but is less detailed and leaves the details to be covered by regulations.

Subsection (2) (a) was amended on the Report Stage so as to except non-domiciled seamen and airmen from the Act and the consequent obligation to pay contributions. Before the amendment the employee was not obliged to pay his share of the contribution whereas the employer was obliged to pay his (the employer's) share. Representations were made to the Minister and it was agreed by representatives of both shipowners and seamen that this amendment should be made and that it was fair and reasonable. Subsection 2 (g) was amended in Committee in the House of Lords to make it correspond with section 58 (2) (e) of the National Insurance Act, *supra*.

(a) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(b) **Regulations.**—This, by section 88 (1), *post*, means regulations made under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press.

(c) **Mariners and Airmen.**—As to these, see the First Schedule, Part I, paragraphs 2, 3, 4 and 5, *post*. "Insured persons" means persons employed in insurable employment (section 88 (1), *post*).

(d) **Neither domiciled nor have a place of residence in the United Kingdom.**—This provision was amended on the Report Stage so as to exempt non-domiciled seamen altogether from insurance under the Act. See General note, *supra*. A person's domicile is that country in which he either has or is deemed by law to have his permanent home. The law attributes to every person at birth a "domicil of origin". It may be changed, and a "domicil of choice" acquired, whereupon the domicil of origin remains in abeyance. A man's residence has been described as the place where he eats, drinks and sleeps, or where his family or servants eat, drink or sleep (*R. v. North Curry (Inhabitants)* (1825), 4 B. & C. 953, *per* BAYLEY, J., at p. 959). This is a general definition only and a resident will include visitors who do not merely come for a few hours or a meal. It is a question of fact in each case. As to this subject generally, and as to how far proof of residence will go towards proving domicil, see 6 Halsbury's Laws (2nd Edn.) 198 *et seq.* As to residence, see also sections 17-24, and 32 (1) (a), *ante*. "The United Kingdom" means Great Britain and Northern Ireland (Royal and Parliamentary Titles Act, 1927, section 2 (2); 3 Halsbury's Statutes 191). As to territorial waters, see note (r) to section 7, *ante*.

(e) **Exempting from the payment of contributions.**—As to the payment of contributions, see Part I, *ante*.

(f) **Benefit.**—This means benefit under this Act (section 88 (1), *post*).



(g) **Share fishermen.**—This paragraph was added in Committee as the result of an undertaking given on the Second Reading in answer to representations made during the debate. It seeks to bring all share fishermen within the Act, though power is retained to exclude certain of them, namely those who are on a share basis ancillary to their normal work. In this way it is intended to include all those now insured under National Health Insurance. See Part I (g) and Part II (p) of the First Schedule of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1189, 1191. Cf. Part II (12) of the First Schedule of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 571; which excepts employment as a share fishermen from insurance. It is intended to make the same arrangement as to the payment of their contribution as was made under National Health Insurance, namely that it shall be a charge against the boat. There will be no set rules as to the deduction of these contributions. Conditions in the industry may vary from port to port. Wherever possible there will be a declaration by an owner, if he is a share owner who does not go to sea, that he will pay his contribution and the employees will pay theirs. In other areas it will be more convenient for the "ship's husband" to pay both the employer's and employees' contributions as part of the charge on the boat, as has been done with regard to National Health Insurance. In any case the Industrial Injuries Fund (section 58, *ante*) will receive both employers' and employees' contributions, whoever may pay them in the first place. It is intended to define by regulations under section 80 (1) (c), *post*, who is to be deemed to be the employer. Cf. Part I (g) of the First Schedule of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1189. See, generally, the National Health Insurance (Share Fishermen) Order, 1937 (S.R. & O. 1937 No. 1062), as amended by the National Health Insurance (Juvenile Contributors Extension) Order, 1937 (S.R. & O. 1937 No. 483), which was in part revoked by the National Health Insurance (Subsidiary Employments) Order, 1943 (S.R. & O. 1943 No. 311). As to the consequential amendments made in Committee to the First Schedule of the present Act, see paragraphs 2 and 7 of that Schedule, *post*.

(h) **Accidents, diseases and injuries happening, contracted or received outside Great Britain.**—As to accidents happening to insured persons while they are outside Great Britain, see section 7 (3), *ante*, and note (r) thereto. That subsection is expressly made subject to this later provision. As to accidents generally, see notes (e) and (g) to section 1, *ante*.

As to contracting diseases and receiving injuries, see section 55 (4), *ante*, and note (i) thereto.

(i) **Accidents on the way to or from ship or aircraft.**—As to accidents happening while travelling to or from work in the employer's transport, see section 9, *ante*, which must be read in conjunction with this provision. As to accidents arising out of and in the course of the employment, see section 1, *ante*, notes (e) and (g). "Ship" includes every description of vessel used in navigation not propelled by oars (Merchant Shipping Act, 1894, section 742; 18 Halsbury's Statutes 411). "Vessel" includes any ship or boat, or any other description of vessel used in navigation (*ibid.*). These definitions do not purport to be exhaustive, and regard must be had in all cases to the context. See, generally, 30 Halsbury's Laws (2nd Edn.) 173, 174. "Aircraft" includes all balloons, whether fixed or free, kites, gliders, airships, and flying machines (Air Navigation (Consolidation) Order, 1923, paragraph 81 (1); S.R. & O. 1923 No. 1508; which also defines some of the above types of aircraft). Note that the definition is not exhaustive. The Order has been much amended. See 31 Halsbury's Laws (2nd Edn.) 854–857. As to "ship" and "vessel", see also note (h) to the First Schedule, Part I, paragraph 2 (1).

(k) **Taking evidence for claims.**—This evidence will be taken in the form of affidavits, declarations or depositions. A claim to benefit includes (a) an application for a declaration that an accident was or was not an industrial accident (section 49, *ante*); and (b) in relation to the review of an award or decision (sections 37, 40 and 50, *ante*), a claim by a beneficiary under the award or affected by the decision (section 88 (1), *post*). "His Majesty's Dominions" includes British protectorates and protected states and any territory in respect of which a mandate has been accepted by his Majesty and is being exercised by the government of any part of His Majesty's Dominions (section 88 (1), *post*). The definition is not exhaustive. "His Majesty's dominions" means all the territories under the sovereignty of the King, including the United Kingdom (see note (d), *supra*) (as to territorial waters, see note (r) to section 7, *ante*). By the Statute of Westminster, 1931, section 1; 24 Halsbury's Statutes 127; the term "Dominion" means any of the following dominions: the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State (now Eire, by the Eire (Confirmation of Agreements) Act, 1938, section 1; 31 Halsbury's Statutes 93) and Newfoundland. It does not include India, as to which, see the Government of India Act, 1935. The expression "superintendent", so far as respects a British possession (which is defined as any part of the British dominions except the United Kingdom); Interpretation Act, 1889, section 18 (2); 18 Halsbury's Statutes 1000) includes any shipping master or other officer discharging in that possession the duties of a superintendent (Merchant Shipping Act, 1894, section 742; 18 Halsbury's Statutes 411).

(l) **British consular officer.**—The expression "consular officer" includes



consul-general, consul, vice-consul, consular agent, and any person for the time being authorised to discharge the duties of consul-general, consul, or vice-consul (Interpretation Act, 1889, section 12 (20); 18 Halsbury's Statutes 994).

(m) **Statutory obligation to pay wages.**—As to this, see section 155 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 219; and the following sections to section 167; *ibid.* 219–222. As to “ship or vessel”, see note (i), *supra*.

(n) **Prescribed dependants.**—This means prescribed by regulations (section 88 (1), *post*). The regulations will show whether the dependants prescribed are to be the same as those prescribed under sections 18 and 23, *ante*.

(o) **Contributions payable by employer.**—As to these, see sections 3, 4 and 5, *ante*. As to who is an employer, see section 1, *ante*, and section 80 and the First Schedule, *post*.

(p) **Contributions to be paid out of moneys provided by Parliament.**—As to these, see section 2, *ante*.

(q) **Administration and application of employer's contributions.**—These will be prescribed by regulations (section 88 (1), *post*). Part V, *ante*, contains provisions for recovery of contributions, especially sections 69 and 70, *ante*. As to the Industrial Injuries Fund, see section 58, *ante*.

(r) **Apprentice pilot.**—See the Pilotage Act, 1913, section 17 (1); 18 Halsbury's Statutes 494. “Apprentice pilot” is not defined, but “pilot” means any person not belonging to a ship who has the conduct thereof; Merchant Shipping Act, 1894, section 742; 18 Halsbury's Statutes 411. “Apprentice” is defined in section 23 of the Family Allowances Act, 1945; 32 Statutes Supp. 87; as meaning a person undergoing full-time training for any trade, business, profession, office, employment, or vocation, and not in receipt of earnings which provide him, wholly or substantially, with a livelihood. See also note (d) to the First Schedule, Part I, *post*. This provision is intended to cover accidents happening outside Great Britain. As to “in the course of” an employment, see notes (e) and (g) to section 1, *ante*, sections 7 (4) and 8, *ante*, and Willis 21–44. As to the meaning of “mariner”, see note (c), *supra*.

(s) **Persons on test flights.**—As to “in the course of”, see note (r), *supra*. As to “insurable employment”, see section 1, *ante*. As to “aircraft”, see note (i), *supra*. The purpose of this provision is to cover such persons as engineers employed by the manufacturers of aircraft or by the Air Ministry when they are on test flights outside Great Britain, for example over the Atlantic Ocean. See section 7 (3), and note (r) thereto. As to the meaning of “airman”, see note (c), *supra*.

**78. Police.**—This Act shall, in its application to members of a police force within the meaning of the Police Pensions Act, 1921 (a), and persons employed in any other prescribed employment (b), being employment in respect of which benefits are payable under that Act as extended by or under any enactment (c), have effect subject to such modifications as may be prescribed.

#### NOTES

**General effect of section.**—This section brings the police forces within the Act, and was added on the Report Stage after consultation between the Minister and police representatives. They had originally been excluded because they were similar to the armed forces of the Crown, because they had their own Police Pensions Acts, covering the special risks undertaken by police officers, and because the benefits given by those Acts were much better than those given by the original Bill. This is no longer so.

The Minister has power to make by regulations any modifications necessary for applying this Act to police forces.

This Act does not provide for the repeal of the Police Pensions Act, 1921; 12 Halsbury's Statutes 873; so that apparently the pensions scheme under that Act remains in force. This will necessitate amendments to that Act. For example, under section 13; *ibid.* 880; there is a power to reduce pension when infirmity is due to misconduct, in the sense of “his own default or his vicious habits”. This conflicts with the principle established in the present Act, which is that misconduct does not disentitle an insured person to benefit. Cf. section 1 (1), proviso (b) of the Workmen's Compensation Act, 1925; Willis 6. Misconduct only comes into the present Act as a disqualifying factor where it is in connection with medical examination or treatment required under section 25, *ante*. See section 32, *ante*. For supplementary schemes generally, see section 83, *post*.

(a) **Police force within the meaning of the Police Pensions Act, 1921.**—As to this, see section 30 and the Third Schedule of that Act; 12 Halsbury's Statutes 888, 894. See also the Metropolitan Police Act, 1933, section 2 (1); 26 Halsbury's Statutes 631; and the National Fire Service (Preservation of Pensions) (Police Firemen) Regulations, 1941 (S.R. & O. 1941 No. 1271); 34 Halsbury's Statutes 252.

(b) **Prescribed employment.**—“Prescribed” means prescribed by regulations (section 88 (1), *post*).



(c) **Employment in respect of which benefits are payable under that Act as extended by or under any enactment.**—This means employment in any police force within the Act. See note (a), *supra*.

**79. Children under school age.**—(1) A child and his employer shall be exempt from payment of contributions while the child is under the upper limit of the compulsory school age (a).

(2) A child under the upper limit of the compulsory school age shall not be entitled to injury benefit (b) except in so far as may be provided by regulations (c).

#### NOTES

**General effect of section.**—This section exempts children under school age and their employers from paying contributions but equally excludes such children from injury benefit except in so far as may be provided by regulations.

The White Paper on Social Insurance, Part II, of September, 1944 (Cmd. 6551) proposed that children under school-leaving age should not be insured. But, since they may be, and often are, in part-time employment, it has been decided to give them limited benefit rights. They will get disablement benefit under section 12, *ante*, but their injury benefit under section 11, *ante*, will be at a reduced rate until school-leaving age is reached. Thereafter, until the age of eighteen injury benefit will be at juvenile rates—half-rate up to the age of seventeen and three-quarter rate up to the age of eighteen (see section 11 (3), *ante*). The allowance or pension will be paid to the child's parent or guardian. These intentions, announced by the Minister on the Second Reading of the Bill (414 H. of C. Official Report 279–280), are partly embodied in sections 11 and 12 and will be implemented by regulations.

Section 61 of the National Insurance Act, 1946, makes special contribution concessions for persons under sixteen on the appointed day.

(a) **Children under school age.**—As to “child” and “the upper limit of the compulsory school age”, see section 88 (2) (a) and (b), *post*, and note (c) to section 17, *ante*, where the subject is fully discussed. As to “employer”, see sections 1 and 2, *ante*, and the First Schedule, *post*. As to payment of contributions, see sections 3–5, *ante*.

(b) **Injury benefit.**—As to this, see section 11, *ante*.

(c) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, namely under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they are to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press.

**80. Persons to be treated as employers in certain cases.**—(1) In relation to—

- (a) any person who is an insured person otherwise than by virtue of a contract of service or apprenticeship (a) ; or
- (b) any other insured person employed for the purpose of any game or recreation and engaged or paid through a club (b) ; or
- (c) any other insured person in whose case it appears to the Minister there is special difficulty in the application of all or any provisions of this Act relating to employers (c) ;

regulations may provide that a person prescribed by the regulations shall be treated for the purposes of this Act as the insured person's employer (d).

(2) Subject to the provisions of any regulations made under the foregoing subsection, where an insured person is employed by more than one person in any contribution week (e), the first person employing him in that week or such other person as may be prescribed shall be deemed to be (f) his employer for the purpose of the provisions of this Act relating to contributions (g).

(3) Where insured persons work under the general control and management of some person other than their immediate employer (h), regulations may provide—

- (a) that that other person shall be treated as the employer for the purposes of this Act ; and
- (b) for allowing that other person to deduct the amount of any contri-



- butions (other than employer's contributions) which he may become liable to pay (i) from any sums payable by him to the immediate employer; and
- (c) for enabling the immediate employer to recover from the insured persons the like sums and in the like manner as if he were liable to pay contributions (k).

### NOTES

**General effect of section.**—This section gives power to treat as employers (mainly for contribution purposes) in certain cases persons who would not ordinarily be regarded as employers and to give them an employer's rights in respect of contributions. It also provides for the case where a workman is "lent" to another employer for a particular job.

The section is similar to section 11 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 509.

The corresponding section of the National Insurance Act, 1946, is section 9, though the wording of that section and its provisions are necessarily very different.

(a) **Insured person otherwise than by virtue of a contract of service or apprenticeship.**—"Insured person", by section 88 (1), *post*, means a person employed in insurable employment, as to which, see section 1, *ante*. As to "contract of service or apprenticeship", see First Schedule, Part I, 1, *post*, and notes (c) and (d) thereto. This provision will enable anomalous cases to be covered, such as those where services are rendered under a family arrangement which is not contractual, for example between parent and child.

(b) **Club employees.**—As to these, see also the First Schedule, Part II, 5 (c), *post*, and note (h) thereto. That provision excepts employment of a casual nature, but not, among others, casual employment through a club. Most clubs are unincorporated associations and it is therefore necessary to prescribe some person who is to be treated as the employer, for whether the employment is casual or not, the employee is an insured person. It is for this reason also that the expression used is "through a club" and not "by a club". Section 3 (2) (c) of the Workmen's Compensation Act, 1925; Willis 160; contained a similar provision excepting casual employees from the definition of "workman" unless they were club employees. If they were club employees, the manager, or members of the managing committee, of the club, were, for the purposes of that Act, to be deemed to be the employers. *Ibid.*, section 5 (3); Willis 207-208. As to casual employment, see also Willis 182-183 and the cases there cited. See also the First Schedule, Part II (ii) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 571; which made a similar exception. See now section 1 (3) (b) (i) of the National Insurance Act, 1946.

(c) **Other cases of special difficulty.**—"The Minister" means the Minister of National Insurance (section 88 (1), *post*). A case which will fall to be dealt with under this provision is that of the share fishermen. See section 77 (2) (b), *ante*, and note (g) thereto. There is also the case of the pilot, in which the intention is to prescribe the pilotage authority as the person responsible for the payment of contributions (sections 3-5, *ante*) and some other person, probably the master of the ship, as the person responsible for reporting accidents (section 26, *ante*). Section 86, *post*, also gives power to cover such cases by order or regulation. As to the provisions relating to employers, see sections 3-5, 8-10, 25, 26, 57, 62, 67, 69, *ante*. Questions as to who is or was liable to pay contributions as an employer will be determined by the Minister under section 36 (1) (a) (iii), *ante*.

(d) **Regulations may prescribe person to be treated as employer.**—"Regulations" means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press. "Prescribed" means prescribed by regulations (section 88 (1), *post*). As to "employer", see sections 1 and 2, *ante*.

(e) **Contribution week.**—This expression, also used in sections 3 and 5, *ante*, means the period of seven days commencing from midnight between Sunday and Monday (section 88 (1), *post*).

(f) **Shall be deemed to be.**—As to the meaning of this expression, see note (s) to section 7, *ante*. It is used in various places in this Act in a different sense from the expression "shall be treated as", the former apparently being used where the state of affairs deemed is a pure legal fiction, as where an employer has ceased to be such during a contribution week, and the latter where the person or thing to be treated as being something in fact still bears some relationship to the subject-matter of the provision, as where a permanent employer is to be treated as such, though the insured person has been "lent" to an immediate employer (see subsection (3)). Both are in a



sense employers. In the latter case as dealt with in section 5 (1) of the Workmen's Compensation Act, 1925, however; Willis 207; the expression used is "deemed to be".

(g) **Provisions of this Act relating to contributions.**—These are contained in Part I, sections 2–5, and in Part V, sections 65–72, *ante*.

(h) **Insured persons working temporarily under immediate employer.**—The Workmen's Compensation Act, 1925, by section 5 (1), Willis 207, provided that where the services of a workman were temporarily lent or let on hire to another person by the person with whom the workman had entered into a contract of service or apprenticeship, the latter should, for the purposes of that Act, be deemed to continue to be the employer of the workman whilst he was working for that other person. Some cases decided on this point will be found collected in Willis at pp. 209–210. The wording of the present provision is wider and covers all cases where the insured person's employer sends him to work under the immediate direction of another. Many reported cases have been fought on this point, usually on the question—who was liable as master for his servant's negligence? For example, in *Jones v. Scullard*, [1898] 2 Q.B. 565; 34 Digest 22, 25; the defendant owned a brougham, horses and harness which he kept at a livery stable. The keeper of the stable used to supply the defendant with one of his own men to drive the brougham. The brougham, with one of the defendant's horses, driven by a man who had driven the defendant continuously for six weeks and who was wearing a suit of livery supplied by the defendant, did damage, owing to the driver's negligence. It was held that there was evidence on which a jury might find that the driver was at the time acting as the servant of the defendant. Lord RUSSELL OF KILLOWEN, C.J., said, at p. 573, that it was "quite clear that a man may be the general servant of one person, and yet at the same time be the servant of another in relation to a particular matter, and . . . that the important element, whereby to determine whether he is the servant of the one person or of the other in relation to the particular business on which he was engaged, is which of the two persons had the control of him in the conduct of that business". *Donovan v. Laing, Wharton and Down Construction Syndicate*, [1893] 1 Q.B. 629, C.A.; 34 Digest 26, 49; is also often cited on this point. The defendants contracted to lend to a firm who were unloading a ship at their wharf a crane with a man in charge of it. He took his directions from the firm or their servants, one of whom was the plaintiff, who was injured by the crane driver's negligence. It was held that the crane driver remained the general servant of the defendants, yet, as they had parted with the power of controlling him with regard to the matter on which he was engaged, they were not liable for his negligence when so employed.

(i) **Deduction of contributions by permanent employer.**—The right of the employer to deduct the insured person's contribution from his wages is derived from section 5 (2), *ante*. The employer may not deduct his own contribution (section 4, *ante*).

(k) **Recovery of contributions from insured person by immediate employer.**—As to the right of the employer to recover contributions paid or to be paid by him on behalf of the insured person, see section 5 (1) and (3), *ante*.

#### *Additional rights to benefit*

**81. Accidents in course of illegal employment, etc.**—(1) Where a claim for benefit is made under this Act (a) in respect of any accident or of any prescribed disease or injury (b), or an application is made thereunder for a declaration that any accident was an industrial accident, or for a corresponding declaration as to any prescribed disease or injury (c), the Minister may direct (d) that for the purposes of this Act the relevant employment shall, in relation to that accident, disease or injury, be treated as having been insurable employment (e), notwithstanding that, by reason of a contravention of or non-compliance with some provision contained in or having effect under any enactment passed for the protection of employed persons or of any class of employed persons (f), the contract purporting to govern the employment was void or the employed person was not lawfully employed therein at the time when or in the place where the accident happened or the disease or injury was contracted or received (g).

(2) In this section the expression "relevant employment" means, in relation to an accident, the employment out of and in the course of which the accident arises and, in relation to a prescribed disease or injury, the employment to the nature of which the disease or injury is due (h).

#### NOTES

**General effect of section.**—This section and sections 82 and 83, *post*, give additional rights to benefit. This section gives the Minister power to direct that the relevant employment in the case of an accident, disease or injury be treated as having been insurable employment, although the contract was for some reason void or illegal.



There was a similar power given by section 3 (3) of the Workmen's Compensation Act, 1925 ; Willis 161 ; empowering the judge, where a contract of service or apprenticeship was apparently illegal, to deal with the case, if he thought proper, as if the contract had been valid.

This section should be compared with section 8, *ante*, which covers accidents happening while the insured person is acting in breach of statutory or other regulations, etc. In such cases the contract is not void or illegal. In both sections the intention is to prevent the insured person losing his right to benefit because of some breach of the law or defect in the making of the contract, of which he may be unaware, though the question of knowledge is irrelevant unless made an element in the illegality by the statute or rule of law making the contract illegal.

(a) **Claim for benefit under this Act.**—A claim for benefit includes in this section, in relation to the review of an award or decision, a claim by a beneficiary under the award or affected by the decision.

(b) **Accident or prescribed disease or injury.**—As to accidents, see section 1, *ante*. As to prescribed diseases or injuries, see section 55, *ante*. "Prescribed" means prescribed by regulations (section 88 (1), *post*).

(c) **Declaration as to industrial accident, disease or injury.**—As to accidents, see section 49, *ante* ; that section is applied to diseases and injuries by section 55 (1) and (2), *ante*.

(d) **The Minister may direct.**—This means the Minister of National Insurance (section 88 (1), *post*). The direction will presumably be given in each case to the insurance officer concerned.

(e) **Relevant employment to be treated as insurable employment.**—As to "relevant employment", see subsection (2), *infra*. As to insurable employment, see section 1, *ante*, and the First Schedule, *post*.

(f) **Contravention of or non-compliance with some provision, etc.**—Such a provision does not come within this section unless the contravention of or non-compliance with it makes the contract of service or apprenticeship void or illegal. Thus, the safety and health provisions of the Factories Act, 1937 ; 30 Halsbury's Statutes 207 ; do not have this effect, though passed for the protection of employees, but the provisions of the Truck Acts, 1831, section 3 ; 8 Halsbury's Statutes 492 ; 1896, sections 2 and 4 ; *ibid.* 514, 515 ; and 1940 ; 33 Halsbury's Statutes 139 ; do have this effect on that particular contract. See also section 120 of the Factories Act, 1937 ; 30 Halsbury's Statutes 283. See also note (g), *infra*.

(g) **Void contract or unlawful employment.**—A void contract need not necessarily be illegal, though every illegal contract is void. A void contract is one which has no binding effect in law on the parties to it ; e.g., certain contracts with infants. An illegal contract is one made for a purpose contrary to law or public policy. A voidable contract, on the other hand, that is one which a party if he chooses can avoid (e.g., on the ground of fraud), is clearly not within the section and was held not to be within the corresponding provision of the Workmen's Compensation Act, provided it had not been avoided at the date of the accident (*M'Lelland v. Hutchison* (1918), 1919 S.C. 68 ; 12 B.W.C.C. 428 ; 34 Digest 258, b ; Willis 169, where several cases on this point are cited). As to this branch of contract law generally, see 7 Halsbury's Laws (2nd Edn.) 147-172.

As to when a disease or injury is contracted or received, see note (i) to section 55, *ante*.

(h) **Relevant employment.**—Cf. the expressions "relevant accident", "relevant injury" and "relevant loss of faculty", which are used throughout the Act and defined in section 88 (1), *post*. As to "out of and in the course of", see notes (e) and (g) to section 1, *ante*. As to a disease or injury due to the nature of the employment, see section 55, *ante*.

**82. Extension of unemployability supplement and attendance allowance to past cases.**—(1) Regulations (a) may provide for conferring on persons who—

- (a) are or have been on or after the appointed day (b) entitled in respect of any injury or disease to weekly payments by way of compensation under the Workmen's Compensation Acts, or under any contracting out scheme duly certified thereunder (c) ; and
- (b) as the result of that injury or disease are, or could for the purpose of the provisions of this Act relating to unemployability supplement (d) be treated as being, incapable of work and likely to remain permanently so incapable (e) ;

the like right to payments under this Act by way of unemployability supplement as if the injury or disease were one in respect of which a disablement pension were for the time being payable (f).



- (2) Regulations may also provide for conferring on persons who—  
(a) are or have been on or after the appointed day entitled in respect of any injury or disease to weekly payments by way of compensation under the Workmen's Compensation Acts, or under any contracting out scheme duly certified thereunder; and  
(b) as the result of that injury or disease require constant attendance (g);

the like right to payments under this Act in respect of the need of constant attendance as if the injury or disease were one in respect of which a disablement pension were for the time being payable in respect of an assessment of one hundred per cent (h).

(3) Such regulations may further provide for applying, in relation to payments under this section, the provisions of this Act relating to benefit and to the making of claims and the determination of claims and questions in so far as those provisions apply in relation to an unemployability supplement or to an increase of a disablement pension in respect of the need of constant attendance, as the case may be, subject to any additions or modifications (i).

(4) All payments under this section shall be paid out of the Industrial Injuries Fund (k).

(5) In this section the expression "Workmen's Compensation Acts" means the Workmen's Compensation Acts, 1925 to 1945, or the enactments repealed by the Workmen's Compensation Act, 1925, or the enactments repealed by the Workmen's Compensation Act, 1906 (l).

#### NOTES

**General effect of section.**—This section gives power to extend the unemployability supplement and increase of disablement pension in respect of the need of constant attendance to what are known as "old cases" or "past cases" and to make the necessary payments out of the Industrial Injuries Fund.

The section originally only extended to the unemployability supplement, but as the result of strong representations during and after the debate on the Second Reading of the Bill, the increase in respect of constant attendance was added by amendment in Committee. The "old cases" are those in which a workman was receiving compensation under the Workmen's Compensation Acts and it is intended that if such a workman is permanently incapable of work or requires constant attendance he shall be in exactly the same position as if the injury or disease had occurred after the "appointed day", so as to give him the right to benefit under this Act. The provision is drawn so as to include what are known as the "pre-1924 cases", which were excluded from some of the more recent Workmen's Compensation Acts giving increases. At present the "old cases" are not brought within this Act except to this limited extent; see section 89, *post*; but discussions on the question are going on, in order to see whether these cases can be brought more fully within the Act. The cost of the existing amendment is not thought likely to disturb the financial structure of the Scheme.

(a) **Regulations.**—This, by section 88 (1), *post*, means regulations made by the Minister under this Act, i.e., under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press.

(b) **The appointed day.**—This means such day as the Minister may by order appoint (section 88 (1), *post*). No order has been made at the time of going to press.

(c) **Workmen's Compensation Acts or contracting out scheme.**—As to the meaning of "Workmen's Compensation Acts", see subsection (5). As to certified contracting out schemes, see sections 1 (3) and 31 of the 1925 Act; Willis 7, 549.

(d) **Provisions of this Act relating to unemployability supplement.**—These are contained in section 13, *ante*.

(e) **Incapable of work and likely to remain permanently so incapable.**—As to this, see section 13, *ante*. Note that this qualification is additional to that of having been in receipt of Workmen's Compensation.

(f) **Right to unemployability supplement.**—As to this, see section 13, *ante*. As to disablement pension, see section 12, *ante*.

(g) **Require constant attendance.**—As to this, see section 15, *ante*. Note that this qualification is additional to that of having been in receipt of Workmen's Compensation.



(h) **Assessment of 100 per cent. for disablement pension.**—As to this, see section 12 (5) and (7), *ante*.

(i) **Provisions as to claims and questions to apply.**—The provisions relating to benefit are contained in Part II, *ante*, and those relating to the determination of claims and questions in Part III, *ante*.

(k) **Industrial Injuries Fund.**—As to this, see section 58, *ante*.

(l) **Meaning of "Workmen's Compensation Acts".**—As to these Acts, see Willis. The text of the Acts without notes is set out in Appendix S; *ibid.* 1127–1206.

**83. Supplementary schemes.**—(1) Any body of persons (a) claiming to represent, or to be entitled to be treated as representing, insured persons of any class and their employers (b) may submit to the Minister (c) a scheme (hereafter in this Act referred to as a "supplementary scheme") for supplementing the rights conferred on those insured persons by this Act, whether by providing for additional payments in cases for which benefit is provided by this Act (d), or by providing for payments in other cases (e), or otherwise (f).

(2) The Minister may by order (g) approve, whether with or without amendment, any supplementary scheme if he is satisfied that it is expedient that the scheme should come into operation :

Provided that the Minister before approving a supplementary scheme shall take steps to ascertain so far as practicable the views of any insured persons or employers affected thereby who in his opinion are not represented by the body submitting the scheme.

(3) Subject to the provisions of this section, a supplementary scheme may—

- (a) apply for the purposes of the scheme (including in particular the purpose of determining any question as to the application of the scheme to any person or class of persons) any of the provisions of this Act or of regulations, with or without modifications (h) ;
- (b) make such provision for the constitution of a body to be charged with the administration of the scheme and with respect to the supervision of the administration of the scheme and accounts as the Minister considers to be necessary for the purpose of giving effect to the scheme (including provision for the making of returns to the Minister as to matters affecting the operation of the scheme (i) ;
- (c) provide for the participation of the Minister in the administration of the scheme to such an extent and for such purposes as may be therein specified (k) ;
- (d) provide for the defraying, out of any funds which may be available for the purposes of the scheme, of such fees and other charges as may be determined by the Minister, with the concurrence of the Treasury, in respect of the participation of the Minister in the administration of the scheme as aforesaid (l) ;
- (e) contain such other provisions as the Minister considers to be necessary for the purpose of giving effect to the scheme (m).

(4) No part of the funds required for providing benefits under a supplementary scheme or otherwise in connection therewith shall be derived from moneys provided by Parliament :

Provided that nothing in this subsection shall prevent the making, in respect of persons whose remuneration is or may be defrayed out of moneys provided by Parliament, of a scheme whereunder contributions are payable by employers (n).

(5) The provisions (other than this section) of this Act, and the provisions of any regulations, shall not, except in so far as they are applied by a supplementary scheme, apply to or have effect in relation to or for the purposes of the scheme (o).

(6) Section thirty-three of the Finance Act, 1921 (which exempts from



income tax income receivable for the purposes of a supplementary scheme in connection with unemployment insurance by the body charged with the administration of the scheme) shall apply in relation to a supplementary scheme under this section as it applies in relation to a supplementary scheme under any other enactment (*p*).

(7) A supplementary scheme when approved by the Minister shall continue in force until determined in accordance with the provisions thereof (*q*).

(8) The Minister may by order (*r*)—

(a) vary or amend the provisions of a supplementary scheme in any manner and at any time if so requested by—

(i) the body by whom it was submitted, or any other body of persons which in his opinion is concerned as representing insured persons or employers; or

(ii) the body charged with the administration of the scheme (*s*); and

(b) where it appears to him that, having regard to any periodic audit and valuation (*t*), the fund constituted under the scheme—

(i) is or is likely to become, and is likely to continue to be, insufficient to discharge its liabilities; or

(ii) is and is likely to continue to be more than reasonably sufficient to discharge its liabilities;

after consultation with the last-mentioned body make such modifications in any of the rates of contribution or the rates or periods of benefit under the scheme as appear to him to be required in order to make the fund, as the case may be, sufficient or no more than reasonably sufficient to discharge its liabilities;

and a supplementary scheme may empower the body charged with the administration of the scheme to make, if the Minister so directs, such temporary modifications in any of the rates of contribution or the rates or periods of benefit under the scheme as are, in the opinion of the Minister, sufficient to secure the solvency of the fund constituted under the scheme (*u*).

#### NOTES

**General.**—This section was added on the Report Stage. It gives the Minister power to approve supplementary schemes which may be submitted to him by bodies of persons claiming to represent insured persons and their employers. The Minister has to investigate the proposed scheme to see whether the majority of people concerned do want the scheme. He is also empowered to vary or amend the provisions of a scheme at the request of other bodies representative of persons concerned and to intervene to secure the reasonable solvency of the scheme. The Minister's order approving the scheme will have to be laid before Parliament under section 87, *post*. He also has power to give the scheme the benefit of the Ministry's organisation and help in administering it, and to charge the cost of so doing to the scheme. It is hoped that this will promote uniformity, efficiency and economy. The income of the scheme is not liable to income tax, a provision added in the House of Lords in Committee. The section permits, over and above the basic benefits given by the Act, a higher standard of benefits in those industries in which employers and employees feel that a scheme is desirable and can be afforded. As to police pensions schemes, see General note to section 78, *ante*.

The National Insurance Act, 1946, contains an almost exactly similar section section 27.

Contracting out of the Workmen's Compensation Acts was forbidden by section 1 (3) of the 1925 Act; Willis 7; except by way of a scheme certified under section 31; Willis 549; by the Registrar of Friendly Societies. In such cases the scheme was substituted for the provisions of the Acts and the employer was liable in respect of those workmen only in accordance with the Scheme (section 31 (1); Willis 549). Under the present section the scheme supplements the rights conferred on those insured persons by this Act (subsection (1)), though provisions of the Act and regulations may be embodied by reference into a scheme, much as "Table A" is embodied into the Articles of Association of a limited company. See Companies Act, 1929, section 8 and First Schedule, Table A; 2 Halsbury's Statutes 780, 1010.



(a) **Any body of persons.**—It is not necessary that the body should be one recognised by law as a body corporate by reason of incorporation by statute or charter or under the Companies Act, nor need it even be a body required by law to be registered.

(b) **Insured persons of any class and their employers.**—"Insured person" means a person employed in insurable employment (section 88 (1), *post*). As to "insurable employment" and "employer", see section 1, *ante*, and the First Schedule, *post*. See also, as to "employer", section 80, *ante*. Note that both employees and employers must be represented in the body.

(c) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(d) **Additional payments in cases in which benefit is provided by this Act.**—This means payments in addition to the benefits provided by Part II, *ante*. The scheme must be additional to the statutory benefits, not instead of them (cf. section 31 of the Workmen's Compensation Act, 1925; Willis 549).

(e) **Payments in other cases.**—For example, in the case of an accident proved to have arisen "during the course of" the employment, but which the appropriate officer or tribunal is satisfied by evidence did not arise "out of" the employment (see section 7 (4), *ante*).

(f) **Or otherwise.**—This would presumably allow the submitting of a scheme for benefit by way of accommodation, food or comforts or medical, surgical or nursing treatment or attendance.

(g) **Order of the Minister.**—Such an order may not be made until a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament (section 87 (1), *post*). No such order has been made at the time of going to press. When made, the Minister's order will be published.

(h) **Application of Act and regulations.**—This will give statutory sanction, for example, to the collection or deduction from wages of contributions. It will also enable the provisions of the Act as to eligibility for benefit to be incorporated in a scheme.

"Regulations", by section 88 (1), *post*, means regulations made by the Minister under this Act, that is, under the section giving the power and under sections 86 and 87, *post*. Section 87 (2) provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61, *ante*. None have been made at the time of going to press.

(i) **Administration of schemes.**—It is intended that schemes shall provide for their own administrative bodies; committees, trustees, boards and the like; which will run the scheme subject only to general Ministerial supervision to try to ensure economy and efficiency. As to audit, see also subsection (8) (b).

(k) **Participation of the Minister.**—It is left to the framers of the scheme to fix the extent of Ministerial participation. Presumably the Minister would not refuse to approve a scheme on the ground that his participation was not sufficiently provided for, unless he was satisfied that waste or inefficiency would otherwise result.

(l) **Fees and charges to be defrayed out of funds.**—The intention is that the organisation and experience of the Ministry should be available to the body administering the scheme and that it should be paid for out of the funds of the scheme, payments which would otherwise have to go towards maintaining an administrative staff.

(m) **Other necessary provisions.**—This includes anything necessary to the running of the scheme, for example, provisions as to what medical evidence is required before the administrative body will pay out benefit under the scheme, proper scales for calculating benefit, for how long benefit shall be payable, and provisions relating to death benefit.

(n) **No funds to be provided by Parliament.**—These schemes, being supplementary to the benefits given by the Act, are to be self-sufficing. If they are not, subsection (8) (b) provides for modifying rates of contribution and benefit. The proviso makes an exception in the case of employed persons whose remuneration ultimately comes or may come out of moneys provided by Parliament, for example, government servants of all kinds. The employer's contributions under such a scheme would be paid out of moneys provided by Parliament. They would not be paid out of the Industrial Injuries Fund, as to which, see section 58, *ante*.

(o) **Act and regulations not to apply.**—As to regulations, see note (h), *supra*. The Act or regulations may be applied to a scheme by its own provisions (subsection (3) (a)).

(p) **Exemption from income tax.**—This subsection was added in Committee in the House of Lords. For the Finance Act, 1921, section 33, see 9 Halsbury's Statutes 632.

(q) **Duration of scheme.**—The effect of this provision is that the Minister can refuse to approve a scheme (subsection (2)) or can modify it, after consulting the administrative body, for the purpose of securing the reasonable solvency of the fund (subsection (8)), but he cannot order it to be wound up unless it contains a provision



that he may do so. Presumably he could refuse to approve a scheme unless it contained a provision that he should have power to wind it up. In practice the adjustment of contributions or benefits would usually secure reasonable solvency.

(r) **Minister's order.**—See note (g), *supra*.

(s) **Variation or amendment of scheme.**—To vary is to alter in form, appearance, substance or position, to make different by a partial change, to modify, without any question of improvement. To amend, on the other hand, is to change for the better in any way, as by removing what is erroneous, corrupt, faulty, superfluous and the like, by supplying a want or substituting one thing for another. The body charged with the administration will not be the same as the body submitting the scheme or the body seeking variation or amendment (see note (a), *supra*). Any of these bodies may request a change.

(t) **Periodic audit and valuation.**—This will be provided for under section 3 (b), *ante*.

(u) **Changes in contribution or benefit rates.**—This paragraph applies not only to cases where there is a request for a change under paragraph (a) but also to any case where the fund appears to the Minister to be or to be likely to be insolvent or more than reasonably solvent.

### *Corresponding systems in other countries*

**84. Northern Ireland.**—(1) If legislation is passed for purposes similar to the purposes of this Act by the Parliament of Northern Ireland (a), the Minister (b) may, with the consent of the Treasury (c), make reciprocal arrangements with the appropriate authority in Northern Ireland (d) for co-ordinating the two systems of insurance established respectively by this Act and the said legislation so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

(2) On the making of any such arrangements there shall be constituted a Joint Authority (hereafter in this Act referred to as "the Joint Authority") consisting of the Minister and of the appropriate authority in Northern Ireland (e), and the Joint Authority shall have power, in connection with the arrangements—

(a) to make any necessary financial adjustments between the Industrial Injuries Fund and any fund established under the Northern Irish legislation (f); and

(b) to discharge such other functions for the co-ordination of the said two systems as may be provided by the arrangements.

The provisions of the Seventh Schedule to this Act shall have effect with respect to the constitution of the Joint Authority and other matters relating thereto (g).

(3) The Minister may make regulations for giving effect in Great Britain to any such arrangements (h), and any such regulations may provide—

(a) that this Act shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—

(i) for securing that acts, omissions and events having any effect for the purposes of the Northern Irish legislation shall have a corresponding effect for the purposes of this Act (but not so as to confer a right to double benefit) (i);

(ii) for determining, in cases where rights accrue both under this Act and under the Northern Irish legislation, which of those rights shall be available to the person concerned (k);

(iii) for making the provisions as to the administration and enforcement of this Act referred to in the Eighth Schedule to this Act applicable also for the purposes of the Northern Irish legislation (l); and

(b) that the Joint Authority shall be substituted for the Minister in relation to the making of any regulations (other than regulations providing for such a substitution) (m).

(4) In connection with any such legislation as is mentioned in sub-



section (1) of this section, any limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act, 1920 (*n*), shall not apply in so far as it would preclude that Parliament from enacting a provision corresponding to some provision of this Act; and in particular any such legislation as aforesaid may make provision for the repeal as respects Northern Ireland of enactments of the Parliament of the United Kingdom which, as respects Great Britain, are repealed by this Act or were repealed by an enactment so repealed (*o*).

(5) In this section the expression "appropriate authority" means such authority as may be specified in the Northern Irish legislation (*p*).

## NOTES

**General effect of section.**—This section and section 85, *post*, were considerably amended on the Report Stage. As this section now stands it empowers the Minister, with Treasury consent, to make reciprocal arrangements with the Government of Northern Ireland for co-ordinating the system of insurance established by this Act with any system which the Government of Northern Ireland may establish by local legislation. Their intention to introduce such legislation has already been notified. The section also provides for the constitution of a Joint Authority for the purpose of making this co-ordination effect.

Consequential provisions deal with regulations and finance, and with giving the Parliament of Northern Ireland the necessary freedom from existing English legislation to enable it to pass local legislation.

The Workmen's Compensation Act, 1925, did not, except where otherwise expressly provided, extend to Northern Ireland (section 50 (4); Willis 653). The Workmen's Compensation Act (Northern Ireland) and an amending Act of 1931 were those applicable. See Willis 654-655.

Sections 108, 109 and 115 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 563, 564, and 569; dealt with the same question. See also 34 Halsbury's Laws (2nd Edn.) 592.

Part IX of the National Health Insurance Act, 1936, applied only to Northern Ireland.

The section was also amended on the Report Stage to bring the Act into line with the National Insurance Act, 1946, section 63, which contains very similar provisions.

(a) **Legislation by Parliament of Northern Ireland.**—As to this body and its powers generally, see the Government of Ireland Act, 1920; 5 Halsbury's Statutes 580 *et seq.*; and 6 Halsbury's Laws 717 *et seq.* It is intended to introduce such legislation.

(b) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *post*).

(c) **Consent of the Treasury.**—This will be notified by inter-departmental communication.

(d) **Reciprocal arrangements with the appropriate authority in Northern Ireland.**—Similar arrangements were made in 1928 by an agreement under sections 108 and 115 of the Unemployment Insurance Act, 1935 (see General note, *supra*). The "appropriate authority" is defined by subsection (5).

(e) **Constitution of Joint Authority.**—See, further, the Seventh Schedule, *post*. As to the appropriate authority in Northern Ireland, see note (*p*), *infra*.

(f) **Financial adjustments between respective funds.**—As to the Industrial Injuries Fund, see section 58, *ante*. The Northern Irish fund will presumably be established by similar provisions.

(g) **Seventh Schedule.**—This Schedule, *post*, provides for the constitution, etc., of the Joint Authority and brings this Act into line with the National Insurance Act, 1946. See the Eighth Schedule to that Act.

(h) **Regulations.**—This, by section 88 (1), *post*, means Regulations made under this Act, i.e. under the section giving the power and under sections 86 and 87, *post*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press. As to "Great Britain", see note (*r*) to section 7, *ante*.

(i) **Provisions against double benefit.**—As to the way in which double benefit is prevented as between this Act and other English Acts, see section 30, *ante*.

(k) **Rights accruing under both systems.**—These might accrue, for example, under section 77, *ante*, and the corresponding Northern Irish section.

(l) **Provisions of the Seventh Schedule.**—This Schedule, *post*, sets out a number



of provisions relating to administration and enforcement which may be applied for purposes of Northern Irish legislation.

(m) **Joint Authority to be substituted for the Minister in relation to making of regulations.**—Regulations are made by the Minister (section 88(1), *post*), under the enabling sections and under sections 86 and 87, *post*.

(n) **Limitations imposed by Government of Ireland Act, 1920.**—See the Act generally; 5 Halsbury's Statutes 580 *et seq.*; and particularly sections 4, 5 and 6; *ibid.* 582–583.

(o) **Acts repealed by this Act or by an Act so repealed.**—As to these, see the Ninth Schedule, *post*.

(p) **Appropriate authority.**—This refers to subsection (i). The authority will probably be the Minister of Labour for Northern Ireland, who deals with other forms of Social Insurance there.

**85. Dominions, colonies and foreign countries.**—(1) For the purpose of giving effect to any agreement with the government of any part of His Majesty's dominions (a) other than Northern Ireland, or the government of any foreign country, providing for reciprocity in matters relating to the payment of compensation or benefit (b) to employed persons in respect of industrial or similar injuries (c), it shall be lawful for His Majesty by Order in Council (d) to make provision for modifying or adapting this Act in its application to cases affected by the agreement (e).

(2) The modifications of this Act which may be made by virtue of the foregoing subsection shall include provision—

- (a) for securing that acts, omissions and events having any effect for the purposes of the law of the country in respect of which the agreement is made shall have a corresponding effect for the purposes of this Act (but not so as to confer a right to double benefit (f) ;
- (b) for determining, in cases where rights accrue both under this Act and under the law of the said country, which of those rights shall be available to the person concerned (g) ;
- (c) for making the provisions as to the administration and enforcement of this Act referred to in the Eighth Schedule to this Act applicable also for the purposes of the law of the said country (h) ;
- (d) for making any necessary financial adjustments by payments into or out of the Industrial Injuries Fund (i).

#### NOTES

**General effect of section.**—This section empowers His Majesty by Order in Council to make arrangements for the working of this Act in its application to dominions, colonies and foreign countries. Northern Ireland, being in a special position, is dealt with by section 84, *ante*. Cf. section 35 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1227; and section 25 of the Family Allowances Act, 1945; 32 Statutes Supp. 88. See, now, section 64 of the National Insurance Act, 1946, which is very similar to this section. Note that these arrangements are to be made by Order in Council. Ministerial regulations would not be an appropriate procedure.

The intention is that once a man is entitled to benefit under this Act he shall continue to receive it even if he goes abroad. It is hoped to achieve this by arrangements made with dominions, colonies and foreign countries under this section. The right of a beneficiary to "take his benefit with him" is given by section 32 (1), *ante*, under which regulations may be made, dealing with such cases. Accidents happening outside Great Britain, for example, to Admiralty workers in dockyards or to civil engineers' employees abroad, are not within this Act and will have to be covered by special arrangements, as was done in respect of Workmen's Compensation for such employees.

Appendix K of Willis, p. 996, sets out certain Conventions with foreign states and Orders in Council thereunder relating to Workmen's Compensation.

This section was amended on the Report Stage to make it correspond with the amendments to section 84, *ante*, and with the National Insurance Act, 1946, section 64, *supra*. The Joint Authority (see the Seventh Schedule, *post*) only has powers under section 84. The provision conferring on a county court powers to take evidence for use abroad was deleted, presumably in view of the more general provisions substituted.

(a) **His Majesty's dominions, etc.**—As to the meaning of "His Majesty's dominions", see section 88 (1), *post*, and note (k) to section 77, *ante*. The government



of a foreign country means one recognised as such by H.M. Government, not necessarily the *de facto* government of the country.

(b) **Compensation or benefit.**—"Compensation" primarily refers to the Workmen's Compensation Acts and "benefit" (section 88 (1), *post*) to this Act.

(c) **Industrial or similar injuries.**—The phrase is here used in a wide and non-technical sense.

(d) **Order in Council.**—As to Orders in Council generally, see 6 Halsbury's Laws (2nd Edn.) 594. As to the making of Orders under this Act, see section 86, *post*.

(e) **Modifying or adapting this Act.**—Concern was expressed in Committee at the wide power given by these words, and though the Minister gave an assurance that it was not the intention of the Government to make any reduction of benefit in such cases a proviso was urged upon him to make it clear that no such reduction could be made. As amended on the Report Stage the section sets out, in subsection (2), certain modifications, but the list is not exhaustive and there is no express provision against so reducing benefit.

(f) **Provisions against double benefit.**—This paragraph was introduced on the Report Stage. It corresponds with section 84 (3) (a) (i), *ante*. As to the way in which double benefit is prevented as between this Act and other English Acts, see section 30, *ante*.

(g) **Rights accruing under foreign law.**—This of course means rights to compensation or benefit in respect of industrial or similar injuries. If the foreign law gave a right to damages for negligence against some person, this would presumably be outside the scope of this provision.

(h) **Application of the Eighth Schedule.**—This Schedule, *post*, sets out a number of provisions of this Act which may be applied for purposes of Northern Irish legislation, i.e. under section 84 (3) (a) (iii), *ante*. This sub-paragraph enables these same provisions to be made applicable to the law of any dominion or foreign country to which this section applies.

(i) **Financial adjustments.**—These will become necessary if benefit is paid to a person abroad or if contributions are paid by him there. As to the Fund, see section 58, *ante*.

#### General

**86. Provisions as to powers to make Orders in Council and regulations.**—(1) Except in so far as this Act otherwise provides (a), any power conferred thereby to make an Order in Council or regulations (b) may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make, as respects the cases in relation to which it is exercised—
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of this Act (c);
  - (iii) any such provision either unconditionally or subject to any specified condition.

(2) Any power conferred by this Act to make an Order in Council shall include power to vary or revoke any Order in Council so made by a subsequent Order in Council (d).

#### NOTES

**General effect of section.**—This section gives power to make, vary or revoke Orders in Council and regulations and to cover all cases which it is necessary to cover and to make all necessary exceptions for the purposes of the Act. It enables the Minister to use his powers to the full or to such less extent as may be necessary.

As to the power to revoke or vary regulations and Orders made by the Minister under other Acts, see section 107 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 563; and section 167 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1170. The rest of the present section is new.

By the general law the power to rescind, revoke, amend or vary rules, regulations or byelaws is implicit in the power to make them (Interpretation Act, 1889, section 32



(3); 18 Halsbury's Statutes 1003). Note that that subsection does not extend to Orders in Council.

This section corresponds closely with section 75 of the National Insurance Act, 1946, though that section also contains other provisions.

(a) **Except in so far as this Act otherwise provides.**—Examples of limitation of the power to make Regulations are found in sections 30 (1), 41 (1) and 52 (1), *ante*.

(b) **Power to make an Order in Council or regulations.**—The power to make regulations is given by a very large number of provisions in the Act. The power to make Orders in Council is reserved for a few matters for which regulations are inappropriate. See, for example, section 85, *ante*. As to Orders in Council generally, see 6 Halsbury's Laws (2nd Edn.) 594. Regulations are made under the section giving the power, their extent is further governed by the present section, and under section 87, *post*, they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. See also section 88 (1), *post*.

(c) **Different provisions for different cases or purposes.**—This sub-paragraph was amended in Committee by adding the words "or different provision . . . purposes of this Act". The purpose of adding these words is that the Minister shall have power to treat one person as authorised to do one thing and another to do another. For example, in the case of pilots (as to whom see sections 77 and 80 (1), *ante*, and the First Schedule, Part I (3), *post*), the pilotage authority will be prescribed as the person responsible for the payment of contributions (see sections 3–5, *ante*), and some other person, probably the master of the ship or vessel, for reporting the accident (see section 26, *ante*).

(d) **Power to revoke or vary Order in Council.**—This power is put in here because the power given by the general law (see General note, *supra*), does not include Orders in Council.

**87. Regulations to be laid before Parliament.**—(1) No order shall be made under the section of this Act relating to supplementary schemes (a) and no regulations shall be made under section seventy-seven of this Act (b) unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament (c).

(2) All regulations made (whether by the Minister or otherwise) under this Act, other than those to which the foregoing subsection applies (d), shall be laid before Parliament as soon as may be after they are made (e) and if, within the period of forty days (f) beginning with the day on which any such regulations are so laid before it, either House of Parliament resolves that the regulations be annulled, they shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of any new regulations.

(3) In reckoning the said period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days (g).

(4) Section one of the Rules Publication Act, 1893 (which requires notice to be given of a proposal to make statutory rules) shall not apply to regulations made under this Act (whether by the Minister or otherwise) (h).

#### NOTES

**General effect of section.**—This section lays down the procedure whereby Parliament keeps and exercises control over regulations made under this Act. They are, in most cases, to be laid before Parliament for forty days during which either House may annul them. Before being laid before Parliament they are required by section 61 (2), *ante*, to be referred to the Industrial Injuries Advisory Council. Orders relating to supplementary schemes (section 83, *ante*), and regulations made under section 77, *ante* (relating to mariners and airmen), have to be affirmatively approved by both Houses.

Somewhat similar provisions were contained in sections 104 and 105 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 561–562; and section 167 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1170. See also section 32 (3) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1225; and section 42 (2) of the Workmen's Compensation Act, 1925; Willis 580. See now also section 76 of the National Insurance Act, 1946, which contains similar provisions.

This section covers the same ground as the Statutory Instruments Act, 1946; 36 Statutes Supp. 95; which is entitled "An Act to repeal the Rules Publication Act, 1893, and to make further provision as to instruments by which statutory powers to



make orders, rules, regulations, and other subordinate legislation are exercised". The Minister undertook in Committee to consider this section in the light of that Act, which was then a Bill, but no amendment has been made.

Cf. the Statutory Orders (Special Procedure) Act, 1945, relating mainly to private legislation for the purposes of local government and of public utility companies, and providing a new alternative procedure for making or confirming orders made under Acts passed subsequently and under certain specified existing enactments.

(a) **Order under the section relating to supplementary schemes.**—This section is section 83, *ante*. No order has been made at the time of going to press.

(b) **Regulations made under section 74.**—This section, *ante*, relates to mariners and airmen.

(c) **Draft to be approved by each House.**—This draft will have been framed by the Minister under section 77, *ante*, having regard to section 87, *ante*, and then referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. As to laying papers before Parliament, see 24 Halsbury's Laws (2nd Edn.) 176 *et seq.* As to resolutions, see *ibid.* 194 (House of Lords) and 236–238 (House of Commons).

(d) **Regulations made under this Act.**—There are a great many provisions in the Act empowering the making of regulations. These also have to be referred in draft to the Industrial Injuries Advisory Council (see note (c), *supra*). Most regulations under this Act will be made by the Minister, and the word "regulations" when used in this Act means, unless the context otherwise requires, regulations made by him under this Act (section 88 (1), *post*). An example of regulations made "otherwise" is those to be made by the Postmaster-General under section 66 (2), *ante*, relating to insurance stamps.

(e) **As soon as may be after they are made.**—The official view of this expression is that it allows the Minister to do the act required just when he pleases. For example on the Second Reading of the Statutory Instruments Bill the Solicitor-General said (415 H. of C. Official Report, 1099 *et seq.*) that the expression was extremely indefinite and appeared to countenance the idea that it might cover a period of six months.

In section 3 (1) of the Rules Publication Act, 1893; 18 Halsbury's Statutes 1017; statutory rules were required "forthwith" after they were made to be sent to the King's printer. The Statutory Instruments Act, 1946, by section 2 (1); 36 Statutes Supp. 96; requires any statutory instrument "immediately after" its making to be sent to the King's printer (an expression also used in section 76 of the National Insurance Act, 1946), and requires copies to be printed and sold "as soon as possible" unless otherwise provided. The meaning of these expressions is clear. The expression "forthwith" has been judicially construed to mean that where an act can be done without delay it ought to be so done (*Re Southam, Ex parte Lamb* (1881), 19 Ch.D. 169, 173, C.A.; 42 Digest 952, 256). That is, it should be done as soon as possible in the circumstances, the nature of the act being taken into account. See 32 Halsbury's Laws (2nd Edn.) 151, and the authorities there cited. See also 31 Halsbury's Laws (2nd Edn.) 474. "As soon as may be" is not so easy to interpret. It is presumably intended to mean "as soon as the Minister may with reasonable diligence do so", leaving the whole matter in the Minister's discretion and relying on him to exercise his discretion properly. Strictly construed the expression probably means "as soon as practicable", having regard not so much to Ministerial convenience as to whether or not Parliament is sitting, whether printed copies are available, and to the need for reference to the Industrial Injuries Advisory Council under section 61 (2), *ante*.

The expression is also used in section 1 (2), proviso (a) (ii) of the Reinstatement in Civil Employment Act, 1944; 37 Halsbury's Statutes 364; requiring an employee to let his former employer know the facts constituting reasonable cause for refusing the employment now offered him "as soon as may be" after he is notified that it is available.

(f) **Forty days.**—"Day", in other contexts in this Act, means a period of twenty-four hours from midnight to midnight or such other period of twenty-four hours as the Minister may prescribe (section 88 (1), *post*).

(g) **No account to be taken of time when Parliament dissolved, prorogued or adjourned.**—"Dissolved" means dissolved by the Sovereign, with the advice of the Privy Council, by a proclamation under the Great Seal dissolving Parliament and at the same time announcing that the Sovereign has ordered the Lord Chancellor to issue out writs in due form for summoning Parliament. A General Election then ensues. "Prorogued" means prorogued either by the Sovereign in person by a speech from the Throne or by the Lord Chancellor and four Commissioners appointed by letters patent under the Great Seal. Prorogation is always to a definite day on which the next meeting is appointed to take place. It occurs annually. Dissolution, on the other hand, may be at any time but must occur at the end of five years from the first meeting of that Parliament unless the duration of that Parliament is specially prolonged, as was done by Acts passed in 1940–1944. "Adjourned" means by resolution of the House adjourning the sitting for any period of time to be determined by an order of the House. The recesses at Christmas, Easter and Whitsuntide are of course adjournments of longer duration than four days. As to this subject generally, see 24 Halsbury's Laws (2nd Edn.) 266–269.



(h) **Rules Publication Act, 1893, Section 1.**—For this section, see 8 Halsbury's Statutes 1016. It was intended to secure that public bodies interested should make representations as to statutory rules affecting them, but for various reasons this section did not prove effective. It has become common practice to exclude it by such a provision as this one. See, for example, section 47 (5) of the Workmen's Compensation Act, 1925; Willis 629; section 105 (3) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 562; seven out of eight Acts passed in 1944 which conferred the power to make statutory rules, including the Disabled Persons (Employment) Act, 1944, section 20 (3); 37 Halsbury's Statutes 360; the Wages Councils Act, 1945, section 21 (4); 30 Statutes Supp. 56; and the Family Allowances Act, 1945, section 17 (3); 32 Statutes Supp. 83. The Rules Publication Act, 1893, has now been repealed and replaced by section 12 (1) of the Statutory Instruments Act, 1946; 36 Statutes Supp. 101; and this provision would seem to be no longer necessary.

**88. Interpretation.**—(1) In this Act the following expressions have the meanings hereby respectively assigned to them—

- "appointed day" means such day as the Minister may by order appoint (a);
- "beneficiary", in relation to any benefit, means the person entitled to that benefit (b);
- "benefit" means, unless the context otherwise requires, benefit under this Act;
- "claimant" means a person claiming benefit, and includes—
  - (a) an applicant for a declaration that an accident was or was not an industrial accident; and
  - (b) in relation to the review of an award or decision, a beneficiary under the award or affected by the decision;
 and references to a claim shall be construed accordingly (c);
- "contribution week" means the period of seven days commencing from midnight between Sunday and Monday;
- "day" means a period of twenty-four hours from midnight to midnight or such other period of twenty-four hours as the Minister may prescribe;
- "the deceased", in relation to death benefit, means the person in respect of whose death the benefit is claimed or payable;
- "earnings", where used in relation to a person, includes any remuneration or profit derived from a gainful occupation (d);
- "His Majesty's dominions" includes British protectorates and protected states and any territory in respect of which a mandate has been accepted by His Majesty and is being exercised by the government of any part of His Majesty's dominions;
- "hospital or similar institution" includes a workhouse;
- "insured person" means a person employed in insurable employment;
- "medical examination" includes bacteriological and radiographical tests and similar investigations, and references to being medically examined shall be construed accordingly;
- "medical practitioner" means a registered medical practitioner;
- "the Minister" means the Minister of National Insurance (e);
- "prescribe" means, unless the context otherwise requires, prescribe by regulations;
- "regulations" means, unless the context otherwise requires, regulations made by the Minister under this Act (f);
- "relevant accident" and "relevant injury" mean respectively, in relation to any benefit, the accident and injury in respect of which that benefit is claimed or payable; and "relevant loss of faculty" means the loss of faculty resulting from the relevant injury (g).

(2) For the purposes of this Act—

- (a) the expression "child" means a person who would be treated as a child for the purposes of the Family Allowances Act, 1945;
- (b) a child shall be deemed to be under the upper limit of the compulsory school age if he would be treated as being so for the purposes of the said Act;



- (c) a person shall be deemed to have a family which includes a child or children if that person (not being a child) and a child or children (with or without a wife or husband of that person) would be treated for the purposes of the said Act as constituting a family, and references to a child of a person's family shall be construed accordingly (*h*).
- (3) For the purpose of any provision of this Act providing that benefit shall not be payable to a woman after her marriage or re-marriage, references to marriage shall include references to cohabitation with a man as his wife (*i*).
- (4) For the purposes of this Act—
  - (a) a man and his wife shall not be deemed to be living otherwise than together unless they are permanently living in separation either by agreement or under an order of a court (*k*), or one of them has deserted the other and the separation incident to the desertion has not come to an end (*l*);
  - (b) two persons shall not be deemed to have ceased to reside together by reason of any temporary absence of either or both of them, and in particular by reason of any such absence at school or while receiving medical treatment as an in-patient in a hospital or similar institution (*m*).
- (5) For the purposes of this Act—
  - (a) a person shall be deemed to be over or under any age therein mentioned if he has or has not attained that age (*n*);
  - (b) a person shall be deemed to be between any two ages therein mentioned if he has attained the first mentioned age and has not attained the second mentioned age (*o*);
  - (c) a person shall be deemed, according to the law in England as well as according to the law in Scotland, not to have attained the age of eighteen years until the commencement of the eighteenth anniversary of the day of his birth, and similarly with respect to any other age (*p*);
  - (d) regulations may provide that, for the purpose of determining whether a contribution is payable in respect of any person, or at what rate a contribution is payable, that person shall be treated as having attained at the beginning of a contribution week, or as not having attained until the end of a contribution week, any age which he attains during the course of that week (*q*).
- (6) For the purposes of this Act, the exercise and performance of the powers and duties of a public or local authority shall be treated as the trade or business of the authority (*r*).

#### NOTES

**General effect of section.**—This is the "interpretation" or "definition" section, found in almost every Act of Parliament. Some of the expressions used in this Act are defined in the sections or Schedules in which they are used, sometimes for the purposes of that provision only, e.g., sections 7, 11, 12, 22, 36 and 81, *ante*, and Schedules I, Part I, 1 and 4, Part IV, 2, *post*. Other expressions are not defined in this Act at all. In such cases it is necessary to consult (1) the Interpretation Act, 1889; 18 Halsbury's Statutes 992 *et seq.*, or (2) for guidance but not as binding authority, judicial decisions on similar expressions as used in other Acts or in documents, or the interpretation sections of other Acts, for example, section 48 of the Workmen's Compensation Act, 1925; Willis 649; section 113 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 566; section 226 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1183; section 42 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; *ibid.* 1231; and sections 21–23 of the Family Allowances Act, 1945; 32 Statutes Supp. 86, 87. The corresponding section of the National Insurance Act, 1946, is section 78. Note that in subsection (1) of the present section two expressions are used—"means" and "includes". If the former is used, the definition is exhaustive, if the latter, it is not. A very clear example of the latter will be seen in "His Majesty's dominions".

It is not possible to give in this note the numerous places in the Act in which most of the expressions defined in subsection (1) are to be found. Where any expression is



used in the Act and is defined in this section, a reference to this section is given at least once in the section in which the expression is used. A few notes on some of the expressions are, however, included here.

(a) "**Appointed day**".—This method of bringing a statute into force by order after it has received the Royal Assent is sometimes used in modern Acts. See, for example, section 13 (2) of the Weights and Measures Act, 1936; 29 Halsbury's Statutes 1031; under which S.R. & O. 1938 No. 241 was made, bringing that Act into operation on July 1st, 1938; the Trade Marks Act, 1938, section 71 (2); 31 Halsbury's Statutes 792; under which the Trade Marks Rules, 1938 (S.R. & O. 1938 No. 661) were made, fixing July 27th, 1938, as the "appointed day"; the Education Act, 1944, section 119; 37 Halsbury's Statutes 221; and the Requisitioned Land and War Works Act, 1945, section 45; 31 Statutes Supp. 116; under which last section the Chancellor of the Exchequer fixed February 24th, 1946, as the "appointed day". This Act will be brought into force in its entirety. Cf. section 28 (1) of the Family Allowances Act, 1945; 32 Statutes Supp. 90; and section 73 (1) of the National Insurance Act, 1946; which empower the Minister to appoint different days for different purposes and for different provisions of the Acts. The expression occurs most importantly in sections 1 and 7, *ante*. No day has been appointed at the time of going to press.

(b) "**Beneficiary**".—This expression as used in this Act must not be confused with the same expression as used in the law relating to trusts, as to which, see 33 Halsbury's Laws (2nd Edn.) 88.

(c) "**Claimant**".—As to declarations, see section 49, *ante*. As to review, see sections 37, 40 and 50, *ante*.

(d) "**Earnings**".—This definition was inserted in Committee in the House of Lords and is the same as that given in section 78 (1) of the National Insurance Act, 1946. "Gainfully occupied" was an expression much used in the Beveridge Report (Cmd. 6404). It also occurred in section 1 (1) of the Personal Injuries (Emergency Provisions) Act, 1939; 32 Halsbury's Statutes 1061; and was defined for the purposes of that Act by section 8 (1); *ibid.* 1065; as "a person who is engaged in any trade, business, profession, office, employment or vocation, and is wholly or substantially dependent thereon for a livelihood, or a person who, though temporarily unemployed, is normally so engaged and dependent". That definition was for the purposes of a scheme providing payments in respect of war injuries, but it seems equally suitable to the expression as used here, an expression which is also used in the National Insurance Act, 1946; see, for example, section 1 (2) (a). The definition is required in this Act because of the use of the word "earnings" in section 20 (3), *ante*, which prevents an increase of benefit being paid in respect of a wife or husband whose earnings exceed a prescribed amount.

(e) "**The Minister**".—The Minister of National Insurance is appointed pursuant to the Ministry of National Insurance Act, 1944; 37 Halsbury's Statutes 78 *et seq.* The functions of the Secretary of State for Home Affairs with respect to Workmen's Compensation have already been transferred to him by S.R. & O. 1945 No. 318.

(f) "**Regulations**".—As to the scope of regulations, and the procedure for making them, see sections 86 and 87, *ante*. They can of course only be made under one of the numerous provisions in the Act empowering them to be made. There are a few provisions, e.g. section 66 (2), *ante*, empowering some person other than the Minister to make them.

(g) "**Relevant accident**", etc.—Cf. "relevant employment", used and defined in section 81, *ante*.

(h) "**Child**", etc.—This example of definition by reference was criticised in Committee and the Minister was urged to make the definitions in this Act complete in themselves. It is necessary to consult sections 2 and 3 of the Family Allowances Act, 1945; 32 Statutes Supp. 75, 76; and sections 35 and 108 of the Education Act, 1944; 37 Halsbury's Statutes 165, 214. This subsection mainly relates to sections 21–24, *ante*. See note (c) to section 17, *ante*.

(i) "**Marriage includes cohabitation**".—Cohabitation does not necessarily mean marital intercourse, nor, on the other hand, is mere residence under the same roof enough. Cohabitation may be defined as the antithesis of that wilful separation without cause or reasonable cause which constitutes desertion (*Russell v. Russell*, [1895] P. 315, C.A.; 27 Digest 318, 2960. As to desertion, see note (j), *infra*). The practical way of testing the matter is to ask, after considering all available evidence—are the man and woman behaving in all respects as if they were man and wife? This provision relates to sections 19, 21, 23 and 24, *ante*. Cf. section 24 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936; 29 Halsbury's Statutes 1218.

(k) "**Separation by agreement or order of a court**".—"Agreement" would here include an oral agreement as well as a written agreement or a deed. As to the powers of the courts to order separation, see 10 Halsbury's Laws (2nd Edn.) 649 (High Court) and *ibid.* 840 (Courts of Summary Jurisdiction). This provision relates to sections 18–24, *ante*.

(l) "**Desertion**".—Desertion in its essence means the abandonment by one spouse of the other without the latter's consent, with the intention of forsaking the other.



See, generally, 10 Halsbury's Laws (2nd Edn.) 654 *et seq.*, where, however, the words "by" and "of" seem to have got transposed. This provision also relates to sections 18-24, *ante*.

(m) **Residence together not affected by temporary absence.**—This provision relates to sections 16-24, *ante*. As to medical treatment, see section 34 (1), *ante*. As to hospitals or similar institutions, see subsection (1) and section 34 (2), *ante*.

(n) **Person deemed to be over or under any age.**—This provision relates to sections 11 (3), 12 (6) and (7), 13 and 19, *ante*. As to "deemed to be", see note (s) to section 7, *ante*.

(o) **Person deemed to be between any two ages.**—This provision relates to sections 11 (3) proviso (a), 12 (7) proviso (b) (i), 13 (1) proviso (a) and 29 (a) (ii), *ante*. These sections all relate to the seventeen-eighteen year age group which was introduced by amendment on the Report Stage and given the right to three-quarter-rate benefit. This provision is a consequential amendment. As to "deemed to be", see note (s) to section 7, *ante*.

(p) **Attaining age of eighteen.**—This provision relates to sections 11 (3), 12 (6) and (7), and 13 *ante*.

(q) **Attaining an age during contribution week.**—As to "contribution week", see subsection (1) and sections 3 and 5, *ante*. As to "regulations", see subsection (1) and note (f), *supra*.

(r) **Powers and duties of public or local authority.**—This provision relates to sections 8 and 10, *ante*. See note (d) to section 8. The meaning of "public authority" has been much discussed in cases dealing with the Public Authorities Protection Act, 1893; 13 Halsbury's Statutes 455. See now the Limitation Act, 1939, section 21; 32 Halsbury's Statutes 235. See, generally, 26 Halsbury's Laws (2nd Edn.) 290. "Local authority" means the particular body authorised under a particular Act for a particular purpose. Different bodies are the authorities in the same area for different purposes. See note (t) to Part I of the First Schedule, *post*.

**89. Repeals and transitional provisions.**—(1) Workmen's compensation (a) shall not be payable in respect of any employment (b) on or after the appointed day (c), and accordingly the enactments set out in the Ninth Schedule to this Act are hereby repealed as from that day to the extent mentioned in the third column of that Schedule (d):

Provided that—

- (a) the said enactments shall continue to apply to cases to which they would have applied if this Act had not been passed, being cases where a right to compensation arises or has arisen in respect of employment before the appointed day, except where, in the case of a disease or injury prescribed for the purposes of Part IV of this Act (e), the right does not arise before the appointed day and the workman, before it does arise, has been insured under this Act against that disease or injury (f);
- (b) regulations may make such transitional or consequential provisions as appear to the Minister to be necessary or expedient, having regard to the repeal of the said enactments in relation to diseases and to injuries not caused by accident, including provision for modifying or winding up any scheme made thereunder (g);
- (c) the repeal of the Workmen's Compensation Act, 1925, shall not affect any rules of court made under the Workmen's Compensation (Transfer of Funds) Act, 1927, or the power to make new rules of court thereunder (h).

(2) Subject to the provisions of the foregoing subsection, the Workmen's Compensation (Temporary Increases) Act, 1943, shall be made permanent and accordingly shall have effect as if section four were omitted (i).

(3) His Majesty may by Order in Council (k) make or authorise the making of such provision as appears to Him to be necessary or expedient, having regard to the provisions of this section, for—

- (a) modifying or winding up any contracting out scheme certified under section thirty-one of the Workmen's Compensation Act, 1925 (l);
- (b) modifying, in relation to employers' liability insurance business, the Assurance Companies Act, 1909, or any Act passed before the appointed day amending that Act (m);



- (c) winding up any compensation trust established under the Workmen's Compensation (Coal Mines) Act, 1934 (*n*);
- (d) amending or repealing any enactment contained in a local or private Act or an order confirmed by such an Act (*o*);

and rules made under section four of the Workmen's Compensation (Coal Mines) Act, 1934, in relation to deposits made under that section by mutual indemnity associations may, notwithstanding the repeal of that Act by this section, make provision for any matters consequential on the passing of this section (*p*).

(4) The repeal by this section of subsections (2) and (3) of section fifty of the Workmen's Compensation Act, 1925, shall not affect the application of the Acts repealed by that Act or by the Workmen's Compensation Act, 1906, to cases to which by virtue of those subsections respectively they are to continue to apply (*q*).

### NOTES

**General effect of section.**—This section repeals the Workmen's Compensation Acts as from the appointed day, substituting the National Insurance system for the Workmen's Compensation system with respect to all injuries and diseases suffered or contracted thereafter. Rights to compensation which have arisen before that day will continue. These workmen will continue to draw Workmen's Compensation, with suitable adaptation in the case of industrial diseases. If, however, such a workman is virtually unemployable he will be entitled to both the unemployability supplement and constant attendance allowance under this Act. See sections 13, 15 and 82, *ante*.

The National Insurance Act, 1946, Part IV, contains numerous transitional provisions and repeals.

(a) **Workmen's compensation.**—This is payable under sections 1 and 9 of the Workmen's Compensation Act, 1925; Willis 6, 260.

(b) **Any employment.**—Note that this expression is not confined to "insurable employments", as to which, see section 1, *ante*, and the First Schedule, *post*.

(c) **Appointed day.**—This means such day as the Minister may by order appoint (section 88 (1), *ante*). No day has been appointed at the time of going to press.

(d) **Repeal of enactments set out in Ninth Schedule.**—For this Schedule, see *post*. The enactments are the whole of the Workmen's Compensation Acts, and those provisions in other Acts referring to them, with the exception of certain provisions which it is necessary to leave in force to cover the transitional period. Their application to cases arising before the appointed day is saved by the proviso to this subsection.

(e) **Disease or injury prescribed for purposes of Part IV.**—As to these, see section 55, *ante*. They are the "industrial diseases" and injuries not caused by accident. "Prescribed" means prescribed by regulations (section 88 (1), *ante*). Note that here also the expression used is "employment" and not "insurable employment". See note (b), *supra*.

(f) **Right to compensation not arising before appointed day.**—This provision brings under this Act cases where an industrial disease or injury not by accident does not give rise to a right to compensation until after the appointed day (see section 55, *ante*) and the workman has meanwhile become an insured person. He must also fulfil the other requirements of the regulations which are to be made under section 55, *ante*. See especially section 55 (3). "Workman" is defined in detail in section 3 of the Workmen's Compensation Act, 1925; Willis 160. See also the numerous decisions set out in the following pages in Willis.

(g) **Regulations making transitional or consequential provisions.**—"Regulations", by section 88 (1), *ante*, means regulations made by the Minister under this Act, i.e. under the section giving the power and under sections 86 and 87, *ante*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this section at the time of going to press. "The Minister" means the Minister of National Insurance (section 88 (1), *ante*). As to schemes made under the repealed enactments, see Willis 549 (certified schemes under section 31 of the 1925 Act) and, with more particular reference to industrial diseases, the Schemes set out in Appendices M and N; Willis 1004-1093. As to supplementary Schemes under this Act, see section 83, *ante*.

(h) **Rules relating to transfer of funds.**—For the Workmen's Compensation (Transfer of Funds) Act, 1927, see Willis 718-719 (Schedule II (3) of the 1925 Act, under which rules of court were made) and 1193 (text of the 1927 Act). The rules made under the 1925 Act are noted in Willis, at p. 719. The rule relating to England and Wales is Rule 91B of the Workmen's Compensation Rules, 1926; Willis 857. The power to make rules under the 1927 Act is given by section 1; Willis 1193. This



Act is not one of those listed as repealed by the present section and the Ninth Schedule, *post*.

(i) **Saving of Workmen's Compensation (Temporary Increases) Act, 1943.**—For this Act, see Willis 760. Section 4; Willis 765; provided that the Act should expire on December 31st, 1946. The whole Act is repealed by the present section and the Ninth Schedule, *post*.

(k) **Order in Council.**—As to Orders in Council generally, see 6 Halsbury's Laws (2nd Edn.) 594. No Order has been made under this section at the time of going to press.

(l) **Modifying or winding up schemes certified under section 31 of the Workmen's Compensation Act, 1925.**—For this section, see Willis 549.

(m) **Modifying Assurance Companies Act, 1909.**—For this Act, see 2 Halsbury's Statutes 724. It is applied to employers' liability insurance companies by section 33; *ibid.* 740. For any amending Acts, see *ibid.* 724 *et seq.*, and Statutes Supp.

(n) **Winding up compensation trust established under Workmen's Compensation (Coal Mines) Act, 1934.**—For this Act, see Willis 732. Compensation trusts were established under section 1 (1) (b); *ibid.* The extent of their operation was controlled by section 5; *ibid.* 741, and the Schedule; *ibid.* 743. The whole Act is repealed by the Ninth Schedule, *post*.

(o) **Local or private Act or order confirmed thereby.**—As to these, see generally 31 Halsbury's Laws (2nd Edn.) 456–458.

(p) **Rules made under section 4 of the Workmen's Compensation (Coal Mines) Act, 1934, section 4.**—For this section, see Willis 740. The rules made under the section are S.R. & O. 1934 Nos. 1349 and 1350, set out in Willis at pp. 1119–1122. The whole Act is repealed by the Ninth Schedule, *post*.

(q) **Effect of repeal of section 50 (2) and (3) of the Workmen's Compensation Act, 1925.**—This section is repealed by the Ninth Schedule, *post*, which repeals the whole Act. These two subsections, set out in Willis at p. 653, repealed parts of earlier Acts, saving them with respect to the "pre-1924" cases. This saving is continued by the present subsection. For the Workmen's Compensation Act, 1906, section 16 (2), the section repealing the Acts of 1897 and 1900, with a saving for cases where the accident happened before July 1st, 1907, see Willis 1148. These "old cases" do not come under the present Act except for unemployability supplement and allowance for constant attendance (see sections 13, 15 and 82, *ante*, and the proviso to subsection (1), *supra*), a hardship which has been much discussed on the Second Reading debate and in Committee.

**90. Application to Scotland.**—In its application to Scotland this Act shall have effect subject to the following modifications:—

- (a) for any reference to the High Court there shall be substituted a reference to the Court of Session, for any reference to the county court there shall be substituted a reference to the sheriff, for any reference to a workhouse there shall be substituted a reference to a poorhouse and for any reference to a contract of bailment there shall be substituted a reference to a contract of letting to hire (a);
- (b) for any reference to the Registrar General there shall be substituted a reference to the Registrar General of births, deaths and marriages in Scotland and references to a superintendent registrar shall be omitted (b);
- (c) any provision as to sums recoverable summarily or the summary recovery of sums as civil debts shall have effect as if the words "summarily" and "summary" were omitted (c);
- (d) section twenty-eight shall have effect as if for the reference to section five of the Debtors Act, 1869, there were substituted a reference to section four of the Civil Imprisonment (Scotland) Act, 1882 (d);
- (e) section fifty-one shall have effect as if for any reference to a summons there were substituted a reference to an order (e);
- (f) section sixty-eight shall have effect as if—
  - (i) subsections (1) and (2) were omitted;
  - (ii) for any reference to evidence sufficient to justify a prosecution there were substituted a reference to evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of prosecution (f);



- (g) section sixty-nine shall have effect as if for any reference to a summons or warrant there were substituted a reference to a complaint and as if subsection (5) thereof were omitted (g);
- (h) nothing in subsection (2) of section seventy shall be construed as limiting the period within which proceedings for the recovery of any sum may be brought (h);
- (j) section seventy-one shall have effect as if for subsection (2) there were substituted the following subsection:—

“(2) Subsection (1) of section one hundred and eighteen of the Bankruptcy (Scotland) Act, 1913, shall have effect as if at the end thereof there were inserted the following paragraph—

“(f) all sums due in respect of contributions payable during the twelve months before the said date by the bankrupt as the employer of any persons under the National Insurance (Industrial Injuries) Act, 1946 ” (i).

#### NOTES

**General effect of section.**—This Act applies to Scotland as well as to England and Wales (as to Northern Ireland, the Dominions and foreign countries, see sections 84 and 85, *ante*, and section 91, *post*), and therefore requires modification where Scottish law and procedure is different. For Scottish law and procedure generally, see Green's Encyclopædia of the Laws of Scotland. A cross-reference to this section is appended to each section of the Act which is modified by this section. Cf. section 49 and Schedule I (13) of the Workmen's Compensation Act, 1925; Willis 651, 716; which make the necessary modifications in that Act as applied to Scotland. In the National Insurance Act, 1946, section 79, corresponds with this section.

(a) **High Court, etc.**—This provision relates mainly to sections 37, 72, and 88 (1), *ante*, and the First Schedule (7), *post*.

(b) **Registrar General, etc.**—This provision relates to section 63, *ante*.

(c) **Summary recovery of sums.**—This provision relates to sections 5 (3), 67 (2) and 70, *ante*.

(d) **Section 28.**—This section, *ante*, forbids the assignment or charging of benefit. For section 5 of the Debtors Act, 1869, see 1 Halsbury's Statutes 575.

(e) **Section 51.**—This section, *ante*, empowers regulations to be made governing procedure, evidence, etc., in the determination of claims and questions.

(f) **Section 68.**—This section, *ante*, makes general provisions for the institution and conduct of prosecutions under the Act. The Lord Advocate is the Scottish equivalent of the Attorney-General. See 6 Halsbury's Laws (2nd Edn.) 666, 670.

(g) **Section 69.**—This section, *ante*, relates to the recovery of contributions on prosecutions under the Act. Subsection (5) makes sums ordered to be paid to the Industrial Injuries Fund recoverable as penalties.

(h) **Section 70 (2).**—This subsection, *ante*, lays down a three-year time limit within which proceedings for the summary recovery as civil debts of sums due to the Industrial Injuries Fund must be brought.

(i) **Section 71 (2).**—This subsection, *ante*, makes contributions due under this Act a priority debt in bankruptcy.

**91. Short title and extent.**—(1) This Act may be cited as the National Insurance (Industrial Injuries) Act, 1946.

(2) This Act shall not extend to Northern Ireland except in so far as it enlarges the powers of the Parliament of Northern Ireland (a).

#### NOTES

**General effect of section.**—This section gives the “short title” of the Act, which it bears from the date of the Royal Assent, regardless of the “appointed day” (see sections 1, 7, and 88 (1), *ante*). For the “long title”, see the heading of the Act, *ante*, which precedes the preamble and which sets out a little more fully the nature and purpose of the Act. In addition to these titles, the Act is identified by the regnal year and chapter numbers (9 and 10 Geo. 6, ch. 62) also appearing in the heading of the Act, *ante*. See Interpretation Act, 1889, section 35 (1); 18 Halsbury's Statutes 1004. In the Bill as presented to Parliament the year was “1945”, but the Royal Assent was not given until 1946 and the title has been changed accordingly. The section also deals with the extent of the Act.

(a) **Application to Northern Ireland.**—As to this, see section 84, *ante*. As to its application to Scotland, the Dominions and foreign countries, see sections 90 and 85, *ante*.



## SCHEDULES

### Section 1.

### FIRST SCHEDULE

#### INSURABLE AND EXCEPTED EMPLOYMENTS

##### PART I

#### INSURABLE EMPLOYMENTS (a)

1. Employment in Great Britain (b) under any contract of service (c) or apprenticeship (d), whether written or oral, and whether expressed or implied (in this Schedule referred to as a "contract of service").

2. (e)—(1) Employment under a contract of service either as master (f) or a member of the crew (g) of any ship or vessel (h) to which this paragraph applies, or in any other capacity on board any such ship or vessel where—

(a) the employment in that other capacity is for the purposes of the ship or vessel or her crew or of any passengers or cargo or mails carried thereby; and

(b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage (i);

and any other prescribed employment as master or a member of the crew of any such ship or vessel, being a fishing vessel, where the person employed is remunerated in whole or in part by a share in the profits or gross earnings of the fishing vessel (k).

(2) This paragraph applies, with such exceptions as may be prescribed—

(a) to all ships and vessels belonging to His Majesty (l);

(b) to all ships and vessels whose port of registry is a port in Great Britain (m);

(c) to all other British ships and vessels (n) (not being ships or vessels whose port of registry is a port in Northern Ireland) of which the owner (or managing owner if there is more than one owner) or the manager resides or has his principal place of business in Great Britain (o).

(3) In this paragraph the expression "manager" means, in relation to any ship or vessel, the ship's husband or other person to whom the management of the ship or vessel is entrusted by or on behalf of the owner; and references in this paragraph to the owner of a ship or vessel shall, in relation to a ship or vessel which has been demised, be construed as referring to the person for the time being entitled as charterer to possession and control of the ship or vessel by virtue of the demise or any sub-demise (p).

3. Employment as pilot on board any ship or vessel in any case where the person employed holds a licence or deep sea certificate from a pilotage authority in Great Britain covering that employment and in such other cases as may be prescribed (q).

4. Employment as a regular or enrolled member of the crew of any lifeboat stationed in Great Britain under the control of the Royal National Lifeboat Institution (r).

5.—(1) Employment under a contract of service either as pilot, commander, navigator or member of the crew of any aircraft to which this paragraph applies, or in any other capacity on board any such aircraft where—

(a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mails carried thereby; and

(b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight.

(2) This paragraph applies, with such exceptions as may be prescribed, to all aircraft belonging to His Majesty and to all aircraft registered in the United Kingdom of which the owner (or managing owner if there is more than one owner) resides or has his principal place of business in Great Britain.

(3) In this paragraph references to the owner of an aircraft shall, in relation to an aircraft which has been hired, be taken as referring to the person for the time being entitled as hirer to possession and control of the aircraft by virtue of the hiring or any subordinate hiring (s).

6. Employment in Great Britain under any public or local authority constituted in Great Britain (t).

7. Employment in Great Britain in plying for hire with any vehicle or vessel the use of which is obtained under any contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise (u).

8. Employment in Great Britain as a member, or as a person training to become a member, of any such fire brigade, rescue brigade, first-aid party or salvage party at a factory, mine or works as may be prescribed, or of any such similar organisation as may be prescribed (v).

#### NOTES

(a) **Insurable employments.**—For general notes on "employment" and "insurable employment", see notes to section 1, *ante*, as to illegal employment see section 81, *ante*, and notes thereto.

It must be remembered that although an employment falls within one of the



paragraphs of Part I of this Schedule, it will still not be insurable if (i) it falls within an "excepted employment" specified in Part II, *post*; or (ii) the matter is one dealt with in a special way by regulations made under Part III of this Schedule; or (iii) the employment is in the naval, military or air force service of the Crown; see proviso to section 76, *ante*; or (iv) in the case of mariners and airmen, if regulations have been made under section 77, *ante*, exempting them from paying contributions and receiving benefits.

(b) **Employment in Great Britain.**—No case appears ever to have arisen under the similar provisions of the National Health Insurance Acts, in which it was necessary to decide what was meant by "employment in Great Britain". As to "Great Britain", see note (r) to section 7, *ante*.

Section 1 of the Workmen's Compensation Act, 1925; Willis 6; gave a right to compensation "if in any employment personal injury, etc., is caused to a workman", without referring to the locality of the contract or the place where the work was done. It was held in *Tomalin v. Pearson (S.) & Son, Ltd.*, [1909] 2 K.B. 61, C.A.; 34 Digest 258, 2208; that the Act had no application to accidents happening outside the United Kingdom (except in the case of seamen and apprentices and airmen under the provisions of sections 35 and 36 of the Act; Willis 557-572) even though the contract of employment was made here with employers who carry on business here: this was followed in *Schwartz v. India Rubber, Gutta Percha and Telegraph Works Co., Ltd.*, [1912] 2 K.B. 299, C.A.; 34 Digest 258, 2209. It would appear that the present Act is similarly limited, and that a person is not in an insurable employment unless the work which he is to do is to be done here, even though his contract of service is made here. It is, however, clear that if the worker does any work here there will be an "employment in Great Britain" so as to make him compulsorily insurable, and it will remain to be decided whether he is still to be regarded as in insurable employment if he is temporarily abroad, and is injured there: e.g., an engineer employed in Liverpool is sent to Eire to effect a small repair which will keep him there only a couple of days, but he is injured, by accident arising out of and in the course of his employment, while there. His, and the employer's contributions, will have been paid for the period in question. It seems difficult to say that he is not in insurable employment, and yet the *ratio decidendi* of the two workmen's compensation cases cited, *supra*, is against it. It may be noted that those cases were not followed by the Supreme Court, Eire, in a case where both the workman and the employer were resident and domiciled in Eire and the accident happened in England; *Keegan v. Dawson*, [1934] I.R. 232; Digest Supp.

(c) **Employment under a contract of service.**—There is no special definition as to what is meant other than the provision of paragraph 1, *supra*, that the contract may be written or oral, express or implied (as to apprenticeships, see note (d), *post*). This corresponds roughly to the provision of section 3 (1) of the Workmen's Compensation Act, 1925; Willis 160; and the distinctions drawn in the cases under that section between a contract of service and a contract for services would apply in the case of paragraph 1, *supra*. See those cases collected on pp. 163-178 of Willis. In *Chadwick v. Pioneer Private Telephone Co., Ltd.*, [1941] 1 All E.R. 522; a case decided on section 174 (1) of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1175; STABLE, J., expressed the view, not necessary for the decision, that a commercial traveller, paid only his expenses and commission on orders, was not employed "under any contract of service" within Schedule I of that Act; 29 Halsbury's Statutes 1188; there being no control of the employer over the employee.

It should be noted that there are not, as in section 3 of the Workmen's Compensation Act, 1925; Willis 161; any exceptions based on the amount of remuneration in cases where persons are employed otherwise than by way of manual labour.

The class of insurable employment dealt with in paragraph 1, *supra*, is, of course, the widest of all, and the following decisions under the National Health Insurance Acts should also be noted in addition to the cases referred to in Willis.

In *Re Church of England Curates*, [1912] 2 Ch. 563; 44 Digest 1310, 148; it was held, construing similar words in the National Insurance Act, 1911, that curates were not under a contract of service with the incumbent of the living or the bishop so as to make them compulsorily insurable. See also, deciding the same point in regard to nonconformist ministers, *Re Ministers of United Methodist Church* (1912), 107 L.T. 143; 44 Digest 1310, 147. Similarly a bailiff acting under warrant of the High Sheriff of a county is not employed under a contract of service with the High Sheriff; *Re Jones* (1928), 45 T.L.R. 15; 44 Digest 1310, 149.

In the *Appeal of Roberts, Re Postmaster-General*, [1939] 4 All E.R. 269; Digest Supp.; the important question was raised whether sub-postmasters were in employment under a contract of service. It was held that sub-postmasters employed under contracts similar to the one in that case, under which there was a scale payment, are under contracts of service with the Postmaster-General, and therefore in insurable employment. This decision will apply equally to the interpretation of paragraph 1 of Part II to this Schedule to the present Act, *q.v. post*.

In *Re South Dublin Union Officers*, [1913] 1 I.R. 244; 44 Digest 1309, n; it was held that officers of a poor law union were not employed under a contract of service



within the meaning of Part 1, Schedule I to the National Health Insurance Act, 1911, which contained a provision corresponding to paragraph 1 of this Schedule, Part I to the present Act. It is presumably for this reason that in the later National Health Insurance Acts (see e.g. paragraph (d) of Part 1 of Schedule I to the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1189) and in the present Act (see paragraph 6 of Part I of this Schedule, *post*) it is not required that there shall be a contract of service in the case of a person employed under any public or local authority constituted in Great Britain.

As to illegal employment, see section 81, *ante*, and note thereto.

As to trainees in a Government training centre, see note (d), *post*.

(d) **Contract of apprenticeship.**—There is no definition of "apprenticeship" in the Act, which is, perhaps, not very important because to come within paragraph 1, *ante*, there must be "employment" under the contract of apprenticeship: see note (a), *ante*. Nevertheless the precedent of the Family Allowances Act, 1945, might well have been followed. Section 23 of that Act; 32 Statutes Supp. 87; gives the following definition:

"Apprentice" means a person undergoing full-time training for any trade, business, profession, office, employment, or vocation, and not in receipt of earnings which provide him, wholly or substantially, with a livelihood.

That, at any rate, expresses the general idea, and would make it clear that an articulated clerk was in insurable employment, which may be regarded as doubtful in view of *Re Fussell, Ex. p. Prideaux and Rush* (1838), 2 Jur. 366, where at p. 367, Lord COTTENHAM drew a distinction between an apprentice to a trade and an articulated clerk. So far as the Workmen's Compensation Act, 1925, was concerned, an unemployed youth undergoing training in a government instructional centre was not employed under a contract of service or apprenticeship (*Watson v. Government Instructional Centre, Birmingham* (1926), 97 L.J. K.B. 596, C.A., Digest Supp.), and there seems no reason why such person should be held to be within the present Act unless the case came, as well it might do, within paragraph 6 of Part I.

(e) **Employment in ships.**—The provisions of paragraph 2 replace the provisions of section 35 of the Workmen's Compensation Act, 1925; Willis 557; and the effect is that in the case of ships and vessels specified in paragraph 2 (2) masters and members of crews, and persons employed on board such ships and vessels in the circumstances specified in paragraph 2 (1), are in insurable employment. It should be noted, however, that under section 77, *ante*, the Minister may make regulations modifying in such manner as he thinks proper the provisions of the Act in relation to persons who are insured persons by virtue of paragraph 2 of Part I of this Schedule.

(f) **Master.**—This is not defined, either expressly or by reference. By section 742 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 411; "master" includes every person (except a pilot) having command or charge of any ship. Under section 35 of the Workmen's Compensation Act, 1925; Willis 557; it was held that the fact that a master owns shares in the ship does not affect his right to compensation.

(g) **Member of the crew.**—This term is not defined, but it would appear that it includes every seaman with whom a master enters into an agreement (officially called the agreement with the crew, and more commonly referred to as ship's articles) pursuant to the provisions of sections 113 *et seq.* of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 204. See also, as to the decisions on who are "seamen" with whom the master must make an agreement with the crew, 30 Halsbury's Laws (2nd Edn.) 174-175.

(h) **Ship or vessel.**—Neither of these words is defined. By section 742 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 411; "ship" includes every description of vessel used in navigation not propelled by oars, and "vessel" includes any ship or boat or any other description of vessel used in navigation. As to the cases which decide what are ships or vessels, see 30 Halsbury's Laws (2nd Edn.) 173-175.

(i) **Employment in any other capacity.**—This provision in paragraph 2 (1) relating to persons employed on board a ship or vessel in a capacity other than that of master or member of the crew corresponds to section 35 (4) of the Workmen's Compensation Act, 1925; Willis 560. It will be noted that in this case the contract of employment must be entered into in the United Kingdom.

(k) **Share fishermen.**—This provision was added in consequence of the inclusion of share fishermen in the Act by section 77 (2) (b), *ante*. See note (g) to that section.

(l) **Ships and vessels belonging to His Majesty.**—But note that by section 76 persons engaged in the naval service of the Crown, and any other prescribed employments under the Crown, are in excepted employments. In regard to other persons employed by or under the Crown the Act applies in cases where it would apply if the employer were a private person, *ibid*.

(m) **Port of registry in Great Britain.**—As to the requirements to register British ships, unless exempt, and what ships are deemed to be registered here, see 30 Halsbury's Laws (2nd Edn.) 177 *et seq.*

(n) **All other British ships and vessels.**—In general, all British ships must be registered, or they cannot be recognised as British ships (Merchant Shipping Act,



1894, section 2; 18 Halsbury's Statutes 163) but there are certain exemptions (specified in section 3 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 163), and it does not, of course, follow that a British ship is registered at a port in Great Britain so as to come within paragraph 2 (2) (b), *ante*; see section 4 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 164. It is to exempted ships and British ships registered at ports outside Great Britain (other than at Northern Ireland ports) that paragraph 2 (2) (c) applies, provided the conditions referred to in note (o), *infra*, are satisfied.

(o) **Owner . . . or manager resides or has his principal place of business in Great Britain.**—This is not an uncommon case, for the ships, though actually managed and operated from Great Britain, may be registered in ports in the colonies or India.

(p) **Manager : ship's husband : managing owner.**—See 30 Halsbury's Laws (2nd Edn.) 201–202.

(q) **Employment as pilot.**—By section 742 of the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 411; "pilot" means any person not belonging to a ship who has the conduct thereof. At present, paragraph 3 applies only to pilots holding pilotage certificates or deep sea certificates granted pursuant to the provisions of sections 16–29 of the Pilotage Act, 1913; 18 Halsbury's Statutes 494–502; and to them only so long as they are in employment on board a ship or vessel, but it may be applied in such other cases as may be prescribed by regulations. Paragraph 3 does not require that there shall be a contract of service.

(r) **Crew of any lifeboat under control of Royal National Lifeboat Institution.**—There was no provision similar to this in the Workmen's Compensation Act, 1925. For members of a crew of a lifeboat to be in insurable employment the following conditions must be satisfied :—

- (i) There must be employment as a regular or enrolled member of the crew; and
- (ii) The lifeboat must be stationed in Great Britain; and
- (iii) The lifeboat must be under the control of the Royal National Lifeboat Institution.

It will be observed that although there must be "employment" as a regular or enrolled member of the crew, there is no need for there to be a contract of service: see note (a), *ante*, and note to section 1 of Act, *ante*, as to what is meant by "employment".

(s) **Employment in British aircraft.**—Paragraph 5 replaces the provisions formerly contained in section 36 of the Workmen's Compensation Act, 1925; Willis 571; and the Workmen's Compensation (Aircraft) Order, 1924; S.R. & O. 1924 No. 1499. It corresponds, in relation to pilots, commanders, navigators and members of aircraft crews, and to other persons employed on aircraft, to paragraph 2, *ante*, which relates to masters and members of crews of ships and vessels.

In regard to aircraft belonging to His Majesty, it should be noted that persons in the air force service of the Crown, and in any other prescribed employments under the Crown are in excepted employments; section 76, proviso, *ante*.

(t) **"Public or local authority".**—These terms are not defined by the present Act, nor by the National Health Insurance Act, 1936, paragraph (d) of Part I of Schedule I to which had a similar provision; 29 Halsbury's Statutes 1189.

The only statutory definition of "public authority" appears to be that in section 12 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919; 2 Halsbury's Statutes 1183; by which, for the purposes of that Act, "public authority" means any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking. It will be noted that the Crown and Government Departments are not included in the term, but that is because, in this particular Act, Government Departments are specifically mentioned in the operative section of the Act. The cases dealing with what are, and what are not, public authorities arise mostly under the Public Authorities Protection Act, 1893; 13 Halsbury's Statutes 455; (replaced by section 21 of the Limitation Act, 1939; 32 Halsbury's Statutes 235) and are collected in 26 Halsbury's Laws (2nd Edn.) 290 *et seq.* It may be observed that it has been held that the Crown is a public authority (*The Danube II*, [1921] P. 183, C.A.; 38 Digest 103, 741) and it could hardly be argued that a Government Department, such as the Post Office, is not a public authority. Accordingly it is a little difficult at first sight to see why, in the *Appeal of Roberts, Re Postmaster General*, [1939] 4 All E.R. 269; Digest Supp.; (see note (c), *ante*) the case for the employment being an insurable employment was not based on paragraph (d) of Part I of Schedule I of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1189; which corresponds to paragraph 6, *ante*. In this connection, however, it is necessary to look at section 76 of the present Act, *ante* (there is an equivalent provision in section 185 of the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1181). This provides that it shall apply to persons employed by or under the Crown to whom it would apply if the employer were a private person, subject, however, to such modifications as may be made therein by Order in Council for the purposes of adapting the provisions of the Act to the case of such persons, but employment in the naval, military or air service of the Crown, and any other employments under the Crown which may be prescribed by regulations, are excepted employments. Thus



this paragraph, dealing with employment under any public or local authority, has no application to employment under the Crown, for, although the Crown is a public authority, the specific provision of section 76 of the Act, which restricts the application of the Act to cases where it would apply if the employer were a private person, negatives the applicability of this paragraph to Crown servants.

"Local authority" is one of the commonest statutory terms. In the 1936 edition of the Index to Statutory Definitions, which deals with definitions in Public General Acts, whether repealed or not, from 11 Geo. 4 (1830) to 24 & 25 Geo. 5 (1933-4) no less than 101 definitions of "local authority" are referred to, and there have been many more since. There are wide differences in these definitions. Thus section 305 of the Local Government Act, 1933; 26 Halsbury's Statutes 466; defines a local authority as the council of a county, county borough, non-county borough, urban district, rural district, or rural parish. But in section 275 of the same Act; 26 Halsbury's Statutes 452; the expression is defined, for the purposes of that section, to include a burial board and the representative body of a rural parish, while for the purposes of Part II of the Act the expression is by section 248; 26 Halsbury's Statutes 439; defined so as to include a metropolitan borough council and the Common Council of the City of London. It is suggested that, in any case of doubt, if it is found that a particular body is described in an Act of Parliament as a local authority that should be sufficient to bring that authority within the provisions of this paragraph, unless there is some good reason to the contrary.

It should be noted that it is not necessary that the person employed under the local authority should be employed under a contract of service, but it is still necessary that he should be "employed", as to which, see note (c) to section 1 of the Act, *ante*. The requirement that the public authority must be constituted in Great Britain was added in Committee in order to exclude any local government body established outside Great Britain, e.g., in Eire.

(u) **Plying for hire with bailed vehicle or vessel.**—Under paragraph 7, employment in Great Britain in plying for hire with any vehicle or vessel the use of which is obtained under any contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise is an insurable employment. A similar provision in paragraph (e) of Part I of Schedule I to the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1189; came up for consideration in *Thompson's Appeal, Re Johnson (Hove), Ltd.*, [1939] 4 All E.R. 277. In this case the respondents hired a motor car to the applicant, a taxi-cab driver, in consideration of his paying them a fixed sum of money per week, which it was intended he should procure from his earnings in plying for hire. BRANSON, J., held that to come within the statutory provision there must be a contract of employment, express or implied, of some kind. He said (p. 279) "I do not . . . think it necessary that one should be able to point to a concluded contract under which the one person is bound . . . to perform certain acts for the benefit of the other. It seems to me that it might well be possible to say that a person is employed by somebody in plying for hire if, on an examination of the contract between them, one finds that certain benefits are given to the person alleged to be employed in return for something which he has to do, if not by virtue of a contract, at least by virtue of the common intention of the parties that such things shall be done"; on the facts he held that there was an insurable employment.

(v) **Fire brigades, rescue brigades, etc.**—Paragraph 8, *ante*, is a wide extension of section 36 of the Workmen's Compensation Act, 1925; Willis 557; which made provision for applying that Act to men being trained or engaged in rescue work in coal mines.

For paragraph 8 to apply a person must (i) be in employment as a member or as a person training to become a member; and (ii) the fire brigade, rescue brigade, first-aid party or salvage party at the factory, mine or works must be one of such kind as is prescribed by regulations made under the Act (section 88 (1), *post*), or such similar organisation as may be prescribed.

At the time of going to press no such regulations have been made.

## PART II

### EXCEPTED EMPLOYMENTS (a)

1. Any prescribed employment in Great Britain under a public or local authority constituted in Great Britain (b).

2. Employment under a contract of service—

(a) as master or a member of the crew of any ship or vessel, being neither a ship or vessel to which paragraph 2 of Part I of this Schedule applies nor a ship or vessel which is employed exclusively in Great Britain (c); or

(b) in any other capacity on board any ship or vessel where the employment in that other capacity is for the purposes of the ship or vessel or her crew or of any passengers or cargo or mails carried thereby and is employment under a contract of service entered into with a view to its performance (in whole or in part) while the ship or vessel is on her voyage, and either—



(i) the ship or vessel is not one to which the said paragraph 2 applies nor one which is employed exclusively in Great Britain; or  
(ii) the said contract was entered into outside the United Kingdom (d);  
but not including any such employment as is mentioned in paragraph 3 of Part I of this Schedule.

3. Employment under a contract of service—

- (a) as pilot, commander, navigator or member of the crew of any registered aircraft, not being an aircraft to which paragraph 5 of Part I of this Schedule applies; or
- (b) in any other capacity on board any registered aircraft where the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mails carried thereby and is employment under a contract of service entered into with a view to its performance (in whole or in part) while the aircraft is in flight, and either—
  - (i) the aircraft is one to which the said paragraph 5 does not apply; or
  - (ii) the said contract was entered into outside the United Kingdom.

4. Employment of a casual nature (e), not being employment—

- (a) for the purposes of the employer's trade or business (f); or
- (b) as a pilot on board a ship or vessel (g); or
- (c) for the purposes of any game or recreation where the persons employed are engaged or paid through a club (h); or
- (d) as a member of any such organisation as may be prescribed (i) for the purposes of paragraph 8 of Part I of this Schedule.

5. Employment in the service of the husband or wife of the employed person (k).

6. Employment by the father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother or half-sister of the person employed, in so far as the employment—

- (a) is employment in a private dwelling house in which both the person employed and the employer reside; and
- (b) is not employment for the purposes of any trade or business carried on there by the employer (l).

7. Employment of any class prescribed for the purposes of this paragraph with the consent of the Treasury, as being of such a nature that it is ordinarily adopted as subsidiary employment only (m).

8. Employment of any class prescribed for the purposes of this paragraph with the consent of the Treasury, where the person employed is employed therein to no greater extent than such as may be so prescribed as being inconsiderable (n).

### NOTES

(a) **General effect of Part II of the First Schedule.**—By section 1 (2) of the Act, *ante*, every employment specified in Part I of this Schedule is an insurable employment for the purposes of the Act unless it is an employment (called an "excepted employment") specified in Part II of this Schedule. In order, therefore, to determine whether any given employment is an insurable employment Part I of the Schedule, *ante*, must be looked at first, and if a person does not fall within any of its eight paragraphs there is no need to look further. If, however, the employment does fall within one of those provisions that is not conclusive because (i) the employment may be an excepted employment on the ground that it is employment in the naval, military, or air force service of the Crown (see proviso to section 76, *ante*) or (ii) the employment may be some other prescribed employment under the Crown which is by regulations made under the proviso to section 76, *ante*, declared to be an excepted employment; or (iii) there may be regulations under section 77, *ante*, in regard to mariners or airmen which exempt such persons from making contributions and exclude them from benefits; or (iv) under section 79, *ante*, a child under the upper limit of the school leaving age is exempt from payment of contributions, and is not entitled to benefits except in so far as may be provided by regulations; or (v) the employment may be an excepted employment within the present Part II of this Schedule.

For general notes on "employment" and "insurable employment" see notes to section 1, *ante*. As to illegal employment see section 81, *ante*, and notes thereto. Members of police forces were originally excluded from the Act by this Part of this Schedule, being similar to the armed forces of the Crown, and having their own statutory pensions scheme. But they later desired to be included and this was done by adding section 78, *ante*, and deleting the original paragraph 1 of this Part of this Schedule.

(b) **Prescribed employment under a public or local authority constituted in Great Britain.**—By paragraph 6 of Part I of this Schedule, *ante*, employment in Great Britain under a public or local authority constituted in Great Britain is an insurable employment, see generally note (t) to Part I, *ante*.

"Prescribed" means prescribed by regulations (section 88 (1), *ante*).

Paragraph 2 of Part II confers power on the Minister to prescribe that any such employment shall nevertheless be an excepted employment. Presumably he will only do where there is in operation some compensation scheme which is not less beneficial to the persons in question than the statutory benefits under the present Act.



(c) **Ship or vessel employed exclusively in Great Britain.**—As to insurable employment in ships generally see paragraph 2 of this Schedule, Part I, *ante*, and notes thereto. It is to be observed that even though an employment in a ship or vessel does not fall within that paragraph, if the ship or vessel is employed exclusively in Great Britain (e.g., a lake or river steamer) the employment is insurable by virtue of Part I, paragraph 1, of this Schedule, *ante*, on the ground that it is employment in Great Britain under a contract of service. Paragraph 3 (a) of Part II of the Schedule leaves such cases as insurable employments.

(d) **Contract entered into outside the United Kingdom.**—The effect of this provision is that if a person is engaged out of the United Kingdom in any other capacity on board a ship or vessel than that of a master or a member of the crew, he is not in an insurable employment.

(e) **Employment of a casual nature.**—In order for an employment to be exempt on the ground that it is of a casual nature there are two conditions, both of which must be satisfied, viz. (i) the employment must be casual, and (ii) even though it is casual it must not fall within any of the four specified classes of employment dealt with in the notes below. In this note the meaning "of a casual nature" is discussed.

There was a similar, though not identical, provision in section 3 (2) (b) of the Workmen's Compensation Act, 1925; Willis 161; in paragraph 10 of Part II of Schedule I to the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 571; and in paragraph (1) of Part II of Schedule I to the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1191; and the cases decided under these earlier Acts are relevant under the present Act.

In *Hill v. Begg*, [1908] 2 K.B. 802, C.A.; 34 Digest 256, 2192; BUCKLEY, L.J., at pp. 805-806, drew a distinction between a person who is "casually employed", and "employment of a casual nature" and said that it was not the tenure of the employment that mattered but whether the employment was one which in its nature was casual.

No appellate tribunal has attempted a comprehensive definition of what is covered by the words "employment of a casual nature" and the effect of the decisions, taken as a whole, is that where upon all the facts there is a reasonably debatable question whether the employment is casual or not the decision must be regarded as involving a question of fact on which, under the Workmen's Compensation Act, 1925, the decision of arbitration was conclusive; see *Smith v. Buxton* (1915), 112 L.T. 893; 34 Digest 256, 2191; *Stoker v. Wortham*, [1919] 1 K.B. 499; 34 Digest 255, 2186; *Williams v. Haigh* (1925), 18 B.W.C.C. 549; 34 Digest 257, 2197.

Similarly under the present Act it is a matter for the Minister to decide as a question of fact under section 36 (1) (a) *ante*, whether a person is excluded from being in insurable employment because his employment is of a casual nature, and unless he misdirects himself in law as to the principles he should apply, or makes a finding of fact which is unsupported by evidence, there will be no point of law arising on which there could be a reference or appeal to the High Court under section 37 (1) of the Act.

The following cases are given as illustrations only of findings of fact which have (with one exception, viz., *Hill v. Begg*, *post*) been accepted by the appellate court on the ground that there was evidence to support them.

In the following cases the employment was held to be casual: *Hill v. Begg*, [1908] 2 K.B. 802, C.A.; 34 Digest 256, 2192 (temporary employment to clean windows extending over two years at irregular intervals of about six weeks); *Rennie v. Read*, [1908] S.C. 1051 (cleaner employed about once a month, no arrangement being made in advance, the employer having the liberty to employ any other cleaner at any time); *McCarthy v. Norcott* (1908), 43 Ir. L.T. 17 (person employed to do some repairs at private house and afterwards to cut down some trees for a daily wage); *Knight v. Bucknill* (1913), 6 B.W.C.C. 160; 34 Digest 256, 2187 (jobbing gardener employed at 3s. 6d. a day to cut trees, level a lawn and then to lop more trees; work lasted over five weeks and payment was weekly); *Ritchings v. Bryant* (1913), 6 B.W.C.C. 183; 34 Digest 256, 2194 (man cleaned windows of a house for four years once a month, but there were no arrangements as to future work); *Stoker v. Wortham*, [1919] 1 K.B. 499; 34 Digest 255, 2186 (temporary cook for fourteen days while regular cook on holiday: wages weekly with full board and lodging and living in); *Nash v. Nari* (No. 2) (1932), 25 B.W.C.C. 275; Digest Supp. (man employed to whitewash rooms by woman who let furnished rooms).

In the following cases the employment was held not to be casual: *Dewhurst v. Mather*, [1908] 2 K.B. 754; 34 Digest 256, 2190 (employment on the Friday of every week and on Tuesday in every alternate week); *Williams v. Haigh* (1925), 18 B.W.C.C. 549; 34 Digest 257, 2197 (employment to lop trees overhanging a road at a daily wage with an agreement that the job in question should be finished in a few weeks); *Hughes v. Walker* (1926), 19 B.W.C.C. 79; 34 Digest 256, 2189 (workman employed for a few days to build a wall round a garden).

(f) **For the purposes of the employer's trade or business.**—Even if the employment is of a casual nature it is still an insurable employment provided (i) it falls within one of the paragraphs of Part I of this Schedule, *ante*, and (ii) it is employment for the purposes of the employer's trade or business. This was also the case under section 3 (2) (b) of the Workmen's Compensation Act, 1925; Willis 161; and the following cases decided under that Act may assist, though it must be remembered that in this case



too (see note (e), *supra*), the cases are merely illustrations, and each depends upon its own particular set of facts. The decisive factor is the amount of connection of the work with the trade or business. This connection is not established merely by showing that the work is done on business premises, and is not negatived by showing that the premises where the work is done are used also for non-business purposes; see generally *Manton v. Cantwell*, [1920] A.C. 781; 34 Digest 257, 2199.

It should be noted that by section 88 (4), *ante*, for the purposes of this Act the exercise and performance of the powers and duties of a public or local authority are to be treated as the trade or business of that authority.

In the following cases persons have been held to be in employment "for the purposes of the employer's trade or business"—*Johnson v. Monasterevan Store Co.* (1908), 42 Ir. L.T. 268; 34 Digest 257, 2202 ii (repairs to roof of business premises); *Tombs v. Bornford* (1912), 5 B.W.C.C. 338; 34 Digest 257, 2201 (employment of neighbour by farmer to cut boundary hedge separating neighbour's garden from farmer's land); *Cotter v. Johnson* (1911), 45 Ir. L.T. 259; 34 Digest 257, 2202 iii (farmer employing man casually to lop trees which were damaging his buildings); *Boothby v. Patrick* (1918), 120 L.T. 7; 34 Digest 258, 2203 (man employed to assist permanent workmen in dismantling crane which was being moved for re-erection at an extension of works not yet built); *Manton v. Cantwell*, [1920] A.C. 781; 34 Digest 257, 2199 (employment to thatch roof of farmhouse); *Farleigh v. Parker and Lang* (1930), 23 B.W.C.C. 490; Digest Supp. (employment of builder after he had completed repair of roof of farmhouse to cut away boughs of tree which overhung the roof).

It must not be thought that the above cases establish, as a proposition of law, that if a person is employed to repair business premises or to do something that is advantageous for improving those premises, he is necessarily employed for the purposes of the trade or business within the meaning of the Act: the question involved is one of degree and of fact, and a finding cannot be disturbed if there is evidence to support it and no misdirection in law. Hence the Minister's decision on these points (see section 36 (1) (a) (i), and section 36 (3), *ante*) will usually be final, though if it is alleged that there is no evidence to support it, or that it is founded on a misconception of the law, the matter can be brought before the High Court on a point of law under section 37 (1), *ante*; see generally *Manton v. Cantwell*, *supra*, approving the observations of the Court of Appeal in *Alderman v. Warren* (1916), 9 B.W.C.C. 507; 34 Digest 257, 2202.

In the following cases persons have been held not to be employed "for the purposes of the employer's trade or business"—*Rennie v. Reid*, [1908] S.C. 1051 (cleaning windows of a doctor's house, although this included surgery windows); *Bargewell v. Daniel* (1907), 98 L.T. 257; 34 Digest 257, 2200 (repair of houses for a person who was one of several co-owners, and who managed the property, collected the rents, and accounted to his co-owners without fee or reward); *Kelly v. Buchanan* (1913), 47 Ir. L.T. 228; 34 Digest 258, 2202 u (repair of property for a person who at rear of his shop had cottages which he let to tenants); *Miles v. Dawe* (1915), 8 B.W.C.C. 225; 34 Digest 257, 2198 (repairs to property of private property owner); *Alderman v. Warren* (1916), 9 B.W.C.C. 507; 34 Digest 257, 2202 (taking down and repairing a stove and chimney in public house); *Nash v. Nani* (No. 2) (1932), 25 B.W.C.C. 275; Digest Supp. (whitewashing rooms which employer let furnished to guests as a means of making a livelihood).

(g) **Pilots.**—As to pilots, see paragraph 3 of Part I of this Schedule, *ante*, and paragraph 3 of Part II, *ante*.

(h) **Employment for the purposes of any game or recreation.**—Persons employed casually for the purposes of any game or recreation and engaged or paid through a club were first brought within the Workmen's Compensation scheme by the Act of 1923. In relation to such persons the Minister may provide by regulations under section 80 (1) of this Act, *ante*, who is to be treated for the purposes of the Act as the insured person's employer: under section 5 (3) of the Workmen's Compensation Act, 1925; Willis 208; the manager, or members of the managing committee, of the club were deemed to be the employers.

(i) **Member of any such organisation as may be prescribed.**—The effect of this provision is that casual employment as a member of a prescribed fire brigade, rescue brigade, first-aid party or salvage party at a factory, mine or works, or of any such similar organisation as may be prescribed under paragraph 8 of Part I of this Schedule, *ante*, will be insurable employment. Casual employment as a person training to become a member of such an organisation is not, however, insurable employment, although non-casual trainee's is.

(k) **Employment in the service of husband or wife.**—Such employment is now wholly excluded from the range of insurable employments, whereas under the Workmen's Compensation Act, 1925, it was only excluded if the husband or wife who was employed was dwelling in the employer's house; see sections 3 (2) (e) and section 4 (3) of the 1925 Act; Willis 161, 187. The present provision is in accordance with the exclusion of employed husbands and wives in paragraph (g) of Part II of Schedule I to the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1191; and paragraph 13 of Part II of Schedule I to the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 571. There is no provision that the husband and wife must be living together before the exclusion applies.

See also note (l), *infra*.



(l) **Other members of employer's family.**—The present provision is more restricted in its exclusions than the corresponding provisions of the Workmen's Compensation Act, 1925. Under section 3 (2) (e) of that Act; Willis 161; a member of the employer's family dwelling in his house was not entitled to compensation, and by section 4 (3); Willis 187; "member of a family" included all the persons specified in paragraph 6, and also the wife or husband (who are now separately dealt with in paragraph 5).

To be excluded from insurable employment under the present Act (i) the actual employment must be in a private dwelling house in which both employer and the member of his family reside and (ii) the employment must not be for the purpose of a trade or business carried on there by the employer.

In effect the only persons excluded will be any of the specified members of the family engaged in domestic work in the family house, or in private secretarial work. If, for example, a son keeps the books of his father's business at home, or a daughter serves in the public house kept by her father, or in his shop, whether the business is carried on at the dwelling house or not, there will be no exception—provided, of course, that the case falls within Part I of this Schedule, *ante*; for there must in these cases be an employment under a contract of service before the question of whether the employment is an excepted employment arises at all. As to the meaning of being employed for the purposes of the employer's trade or business, see note (f), *ante*.

Where the exception applies, the fact that either employer or worker is temporarily residing elsewhere, will not, presumably (on the analogy of what was held under section 3 (2) (e) of the Workmen's Compensation Act, 1925; Willis 161; see *M'Dougall v. M'Dougall*, [1911] S.C. 426; 34 Digest 261, n) take the case out of the exception.

The exception would not appear to apply in any case where the workman is employed by a company or partnership; see *Wood v. Wood* (1923), 16 B.W.C.C. 208; 34 Digest 262, 2237; in which it was held that a workman employed by a firm consisting of two of his brothers and a sister, with two of whom he resided, was not within the exception contained in section 3 (2) (e) of the 1925 Act; Willis 161.

(m) **Subsidiary employments.**—There was no equivalent provision in the Workmen's Compensation Act, 1925. It will be noted that in this case the regulations to be made by the Minister prescribing the classes of subsidiary employments that are to be excepted employments require the consent of the Treasury. No such regulations have been made at the time of going to press, but there were similar statutory provisions in paragraph (m) of Part II of Schedule I to the National Health Insurance Act, 1936; 29 Halsbury's Statutes 1191; and paragraph 11 of Part II of Schedule I to the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 571. Under these provisions the last operative order made was the National Health Insurance (Subsidiary Employments) Order, 1943; S.R. & O. 1943 No. 311, under which no less than fifty-four classes of employments were excepted as being subsidiary employments, including many employments under the Crown such as sub-postmasters remunerated by scale pay, who would otherwise be included by virtue of the decision in the *Appeal of Roberts Re Postmaster-General*, [1939] 4 All E.R. 269; Digest Supp.; noted, *ante*, auxiliary postmen, part-time telephonists, auxiliary sorters, etc., though in those cases there is no exception if a person renders on the average 18 or more hours in any one or more of these employments weekly. Many employments under local authorities and lighthouse authorities, are also excluded, and various employments in connection with theatres, etc. It may be assumed that a somewhat similar order will be made under the present Act.

(n) **Employment to an inconsiderable extent.**—This is a new type of provision. The regulations to be made require Treasury consent, and none have been made at the time of going to press.

It would appear that the Minister is taking upon himself the power of prescribing by regulation when the maxim *de minimis not curat lex* should be applied in considering whether a person can be properly described as being employed at all.

### PART III

#### PREVENTION OF ANOMALIES (a)

Where it appears to the Minister (b)—

(a) that the nature and other circumstances of the service rendered or the work performed in any employment which is insurable employment and in any employment which is not insurable employment (whether by reason of the fact that it is an excepted employment or otherwise) are so similar as to result in anomalies in the operation of this Act; and

(b) either—

(i) that the first mentioned employment can conveniently be included among the excepted employments; or

(ii) that the second mentioned employment can conveniently be included among the insurable employments;

the Minister may by regulations made with the consent of the Treasury (c) provide that the employment shall be so included.



### NOTES

(a) **Prevention of anomalies.**—Section 1 (2), proviso, *ante*, enacts that Part I of this Schedule, which prescribes what are insurable employments, and Part II thereof, which prescribes what are excepted employments, shall have effect subject to the provision made by Part III of the Schedule for preventing anomalies.

The effect of this Part of the Schedule is that the Minister may make regulations with Treasury consent prescribing that what would otherwise be work in an excepted employment shall be included among insurable employments and that what would otherwise be work in an insurable employment shall be included among excepted employments. The Minister is only to do this where it appears to him that (i) the nature and other circumstances of the service or the work in the one employment is so similar to that in another that it is anomalous if they are not treated alike, and (ii) they can be conveniently treated alike. The Minister is the judge of when this is the case.

(b) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *ante*).

(c) **Regulations made with consent of Treasury.**—This, by section 88 (1), *ante*, means Regulations made by the Minister under this Act, that is, under the section giving the power and under sections 86 and 87, *ante*. They have to be laid before Parliament as soon as may be after they are made, and either House may annul them within forty days. Before being laid before Parliament they have to be submitted to the Industrial Injuries Advisory Council established under section 61 (2), *ante*, and, under this Schedule, to the Treasury. At the time of going to press no regulations have been made under this provision.

### SECOND SCHEDULE

Sections 2, 3.

#### PROVISIONS AS TO CONTRIBUTIONS

##### PART I

#### WEEKLY RATES OF CONTRIBUTIONS PAYABLE BY INSURED PERSONS AND EMPLOYERS (a)

Class of insured person to whom rate applies	Weekly rate of contribution	
	By the insured person	By the employer
Men over the age of eighteen .. .. .	4d.	4d.
Women over the age of eighteen .. .. .	3d.	3d.
Boys under the age of eighteen .. .. .	2½d.	2½d.
Girls under the age of eighteen .. .. .	2d.	2d.

##### PART II

#### EXEMPTIONS FROM CONTRIBUTIONS (b)

1. An insured person shall be exempt from any liability to pay contributions arising by reason of his being employed in any employment in respect of which such exemption is conferred by regulations made under section seventy-seven of this Act (c).

2. An insured person or his employer or both (as may be prescribed) (d) shall be exempt from any liability to pay contributions arising by reason of the insured person being employed—

- (a) in employment of any class prescribed for the purposes of this paragraph with the consent of the Treasury as being of such a nature that it is ordinarily adopted as subsidiary employment only (e);
- (b) in employment of any other class so prescribed, where the insured person is employed therein to no greater extent than such as may be so prescribed as being inconsiderable (f).

An employment may be prescribed by regulations made under sub-paragraph (a) or (b) of this paragraph as respects insured persons employed therein, notwithstanding that in relation to other persons so employed it is an excepted employment by virtue of regulations made under paragraph 7 or 8, as the case may be, of Part II of the First Schedule to this Act (g).

##### PART III

#### RETURN OF CONTRIBUTIONS PAID ERRONEOUSLY

1. Regulations (h) shall provide, subject to the provisions of this Part of this Schedule, for the return to a person and to his employer of any contributions paid by



them respectively under the erroneous belief that the contributions were payable in respect of that person under the provisions of this Act (i).

2. Regulations made under this Part of this Schedule—

- (a) shall provide that a return of contributions shall not be made except on an application made in the prescribed manner and within the prescribed period (not being less than one year) from the date on which the contributions were paid (k); and
- (b) shall provide that a return of an employed person's contributions shall, in a case where the contributions were paid under the erroneous belief that his employment was insurable employment (l), be subject to the deduction of an amount not exceeding the aggregate sum awarded under such erroneous belief and received (whether by him or by any other person) by way of benefit (m)—
  - (i) in respect of an injury or disease caused to or contracted by him, being an injury caused by accident arising out of and in the course of that employment or a disease or injury due to the nature of that employment (n); and
  - (ii) since the date on which the first contribution so paid within the said period was paid;
- (c) may provide, in the case of contributions paid by an employer on behalf of any person employed by him and not recovered from that person, for the return being made to the employer instead of to that person (o).

PART IV

PAYMENT OF CONTRIBUTIONS THROUGH EMPLOYMENT EXCHANGE

1. The Minister (p) may, in such cases and on such conditions as may be prescribed, make an arrangement with any employer who is liable to pay employer's contributions under this Act, whereby, in respect of persons engaged by that employer through an employment exchange or in the employ of that employer at the date of the arrangement, the performance of all or any of the duties required under this Act to be performed in connection with the payment of contributions by the employer in respect of those persons whether on his own behalf or on behalf of those persons, shall be undertaken on behalf of the employer by the employment exchange (q).

2. In this Part of this Schedule the expression "employment exchange" has the same meaning as the expression "labour exchange" in the Labour Exchanges Act, 1909, and includes a branch employment office and a juvenile employment bureau (r).

NOTES

**General effect of Schedule.**—This Schedule makes provision as to contributions and relates mainly to sections 3-5, *ante*. Part I sets out the weekly rates of contributions payable by insured persons and employers. The rates were altered in Committee consequent upon the increase of the maximum rate of disablement pension from 40s. to 45s. Part II exempts certain persons from the payment of contributions. Part III provides for the return of contributions paid erroneously. Part IV provides for the payment of contributions through an employment exchange.

Cf. the Third Schedule of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 573.

**(a) Weekly rates of contributions payable by insured persons and employers.**—These contributions are payable under section 2, *ante*. The intention is that they shall be paid by stamping cards (see section 65, *ante*), and that there shall be one card and one weekly stamp in respect of all the benefits under the National Insurance Scheme. "Insured person" means (section 88 (1), *ante*) a person employed in insurable employment, as to which, see section 1 and the First Schedule, *ante*. As to "employer", see sections 1, 2 and 80 and the First Schedule, *ante*. The rates of contributions payable by insured persons were increased by 1d. by amendment in Committee, consequent on the raising of the maximum rate of disablement pension from 40s. to 45s. (see section 12 (7), *ante*, and the Third Schedule, *post*). The rates in respect of employers and adult insured persons are now the same, as was originally proposed in Part II of the White Paper on Social Insurance (Cmd. 6551) in September, 1944, save that the total contribution for men was then 6d. and for women 4d., divided in each case equally between employer and insured person. In the Bill as presented to Parliament the totals were 7d. and 5d. respectively, divided as to 3d. and 2d. payable by the insured man or woman and 4d. and 3d. payable by the employer. Now the totals are 8d. and 6d. respectively. For boys and girls under eighteen the totals were originally intended to be equally divided between insured person and employer. In the Bill as presented to Parliament they were 3d. for boys and 2d. for girls, divided equally between insured person and employer. Now they are 4d. and 3d. respectively, divided as to 2½d. payable by boys and 1½d. by their employers and as to 2d. payable by girls and 1d. by their employers.

As to the determination of a person's age, see section 88 (5), *ante*.



(b) **Exemption from contributions.**—This Part of the Schedule relates to sections 2-5 and 77, *ante*. The question whether an insured person or his employer is exempt under this Part is to be determined by the Minister. See section 36 (1) (a) (ii), *ante*.

(c) **Regulations under section 77.**—This section, *ante*, empowers regulations to be made modifying the Act as it applies to mariners and airmen. Regulations are made by the Minister under the section giving the power and under sections 86 and 87, *ante*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under section 77 at the time of going to press.

(d) **Prescribed.**—This means prescribed by regulations (section 88 (1), *ante*).

(e) **Subsidiary employment.**—As to this, see the First Schedule, Part II (8), *ante*, and note (m) thereto.

(f) **Employment to inconsiderable extent.**—As to this, see the First Schedule, Part II (9), *ante*, and note (n) thereto.

(g) **Regulations as to exemption in certain employments already excepted.**—As to excepted employments, see section 1 (2), and Part II of the First Schedule, *ante*. These Regulations may only relate to subsidiary or inconsiderable employments. See notes (e) and (f), *supra*.

(h) **Regulations.**—See note (c), *supra*.

(i) **Return of contributions paid erroneously.**—This Part of this Schedule relates to section 3 (5), *ante*. As to what contributions are payable, see sections 2-5, *ante*, and this Schedule generally. The Act contains no provision for the return of over-paid benefit except that contained in section 52, *ante*, and paragraph 2 (b) of this Part of this Schedule. As to "prescribed", see note (d), *supra*. The application will be in a prescribed form and subject to this special period of limitation, and not by action in the courts of law. See sub-paragraph (b).

(k) **Date when the contributions were paid.**—A contribution is paid when the insurance stamp in respect of it is affixed to the insured person's card, or by such alternative method as may be approved. See section 65, *ante*.

(l) **Insurable employment.**—As to this, see section 1, and the First Schedule, *ante*.

(m) **Deduction of benefit erroneously received.**—This, and section 52, *ante*, are the only provisions in the Act for the repayment of benefit wrongly paid. Cf. sections 14 and 33 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 510, 520. "Benefit" means benefit under this Act (section 88 (1), *ante*).

(n) **Injury or disease consequent on employment.**—As to these, see sections 1, 6 and 55, *ante*.

(o) **Contributions paid by employer on behalf of employee.**—As to this, see sections 3-5, *ante*.

(p) **The Minister.**—This means the Minister of National Insurance (section 88 (1), *ante*).

(q) **Payment of contributions through employment exchange.**—This Part relates to section 3 (5), *ante*. Paragraph 1 was amended in Committee, substituting "employer" for "body of persons". "Employment exchange" is defined in paragraph 2. As to "prescribed", see note (d), *supra*. As to employers' contributions, see sections 3-5, *ante*.

These arrangements will presumably be embodied in written agreements though the use of the word "arrangements" suggests that it may be intended that these arrangements shall not have any legally binding effect. Besides the duties as to contributions set out in sections 3-5, and 65 and 66, *ante*, other duties are imposed upon employers by section 26, *ante*. This provision is closely modelled on section 13 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 509.

(r) **Meaning of "employment exchange" and "labour exchange".**—The Labour Exchanges Act, 1909, section 5; 20 Halsbury's Statutes 651; provides that in that Act the expression "labour exchange" means any office or place used for the purpose of collecting and furnishing information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople and workpeople who seek engagement or employment.

This paragraph is modelled on section 113 (1) (k) of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 567.



THIRD SCHEDULE

Section 12.

RATES OF DISABLEMENT PENSION

Degree of disablement							Weekly rate
100 per cent.	..	..	..	..	..	..	45 shillings
90 per cent.	..	..	..	..	..	..	40 shillings and 6 pence
80 per cent.	..	..	..	..	..	..	36 shillings
70 per cent.	..	..	..	..	..	..	31 shillings and 6 pence
60 per cent.	..	..	..	..	..	..	27 shillings
50 per cent.	..	..	..	..	..	..	22 shillings and 6 pence
40 per cent.	..	..	..	..	..	..	18 shillings
30 per cent.	..	..	..	..	..	..	13 shillings and 6 pence
20 per cent.	..	..	..	..	..	..	9 shillings

NOTES

**General effect of Schedule.**—This Schedule relates to section 12 (7), *ante*, and sets out the weekly rate of pension payable according to the percentage assessment of disablement, made in accordance with section 12 (1)–(5), *ante*. The rates were altered by amendment in Committee, consequent on the announcement during the Second Reading debate that the maximum rate of pension was to be raised from 40s. to 45s. a week. This has necessitated the increase of the insured person's contribution by 1d. (see the Second Schedule, Part I, *ante*). For beneficiaries under the age of eighteen and without children or adult dependants there are three-quarter or half rates. See sections 12, 13 and 29, *ante*. Cf. the Fourth Schedule of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 573.

An undertaking was given in Committee that the Schedule would be re-drafted for the Report Stage of the Bill so as to make it fairer to the insured person who was, for example, 99 per cent. disabled. Under the Schedule as originally drafted he would have been treated, for the purpose of determining his benefit rate, as only 90 per cent. disabled. As re-drafted, the Schedule was passed on the Report Stage so as to conform with section 12 (5), *ante*, which was also amended so as to allow a percentage which is half way or more between two multiples of ten to be treated as the next higher multiple of ten and not the next lower. The Schedule now therefore merely sets out each multiple of ten and the rate of benefit appropriate to it.

FOURTH SCHEDULE

Section 21.

PROVISIONS LIMITING BENEFIT PAYABLE IN RESPECT OF ANY DEATH (a)

1.—(1) Where two or more persons satisfy the conditions, in respect of the same death, for receipt of an allowance under section twenty-one of this Act for any period (b), only one of those persons shall be entitled for that period to that allowance, and where two or more persons satisfy the conditions, in respect of the same death, for receipt of—

- (a) a pension under section twenty-three of this Act (c); or
- (b) an allowance under section twenty-four thereof (d);

only one of those persons shall be entitled to the pension or allowance, as the case may be.

(2) In the case of an allowance under the said section twenty-one,—

- (a) where the deceased leaves a widow or widower, then, for any period for which she or he is entitled to death benefit as the deceased's widow or widower and satisfies the conditions for receipt of the allowance, she or he shall be the person entitled to the allowance (e);
- (b) subject to paragraph (a) of this sub-paragraph, regulations may make provision as to the priority in any prescribed circumstances of two or more persons satisfying the said conditions (f).

2. No person shall be entitled in respect of the death of any insured person to a pension under the said section twenty-three, where any person is entitled in respect of the deceased's death to a pension as the deceased's widow or widower or the deceased's parent (g).

3.—(1) Where a person would but for either of the foregoing paragraphs be entitled in respect of the death of an insured person to a pension under the said section twenty-three, he shall, subject to the following provisions of this Schedule, be entitled in lieu thereof to a gratuity (h).

(2) The amount of any gratuity payable by virtue of this paragraph shall, subject to the provisions of this Act limiting that amount by reference to the deceased's contributions to the beneficiary's maintenance (i), and subject also to the following provisions of this Schedule, be one hundred and four pounds; and any such gratuity shall be payable, if and in such cases as regulations so provide, by instalments (k).



(3) No person shall be entitled in respect of the death of any insured person both to a gratuity under this paragraph and to an allowance under the said section twenty-three (*l*).

4. No person shall be entitled in respect of the death of any insured person both to an allowance under the said section twenty-four and to a pension or gratuity, or to an allowance both under the said section twenty-three and under the said section twenty-four (*m*).

5.—(1) The death benefit payable in respect of the death of any insured person by way of parents' gratuities shall not exceed seventy-eight pounds (*n*).

(2) The death benefit payable as aforesaid by way of relatives' gratuities shall not exceed fifty-two pounds, except where either—

(a) no person is entitled in respect of the deceased's death to a pension ; or

(b) some person is entitled in respect thereof to a gratuity in lieu of a pension ;

and shall not in any case exceed one hundred and four pounds (*o*).

(3) The limits imposed by the last foregoing sub-paragraph may be applied either by excluding from the right to a gratuity some of the persons satisfying the conditions for receipt thereof, or by reducing in any proportions the gratuities payable to those persons, or partly in one way and partly in the other ; and regulations may make provision as to the manner in which any of the limits imposed by this paragraph are to be applied in any prescribed circumstances (*p*).

6.—(1) A person shall be treated for the purposes of this Schedule as satisfying the conditions for the receipt of a pension under the said section twenty-three notwithstanding that he is a child, if he may satisfy those conditions on ceasing to be a child (*q*).

(2) The provision of this Schedule limiting the number of persons entitled to a pension under the said section twenty-three shall not preclude a person from becoming so entitled on ceasing to be a child by reason only of some other person having previously been so entitled (*r*).

(3) For the purposes of sub-paragraph (2) of the last foregoing paragraph, any pension or gratuity under the said section twenty-three to which a person may become entitled on ceasing to be a child shall be disregarded (*s*).

7.—(1) Where a person entitled, or who may become entitled, to any such benefit as is mentioned in this Schedule dies within the prescribed time after the deceased without being awarded that benefit (*t*), that person shall be disregarded for the purposes of this Schedule, except in so far as it relates to an allowance under section twenty-one of this Act (*u*) ;

Provided that where an award of benefit in respect of the deceased's death, based on the fact that that person was or might become entitled as aforesaid, has been made in favour of some other person, the death of the first-mentioned person shall not affect that award so as to deprive that other person of any benefit thereby awarded, except where, by reason of the first-mentioned person's death, a further award of benefit of a different description is made on review in favour of that other person (*v*).

(2) For the purposes of this paragraph, a person shall be treated—

(a) as having died without being awarded benefit, if an award of benefit in his favour in force at his death is thereafter reversed on appeal or review (*w*) ; and

(b) as not having died without being awarded benefit, if an award of benefit is, on a claim made by him before his death, made after his death and not reversed as aforesaid (*x*).

## NOTES

**General effect of Schedule.**—This Schedule was greatly enlarged on the Report Stage, because of the amendments to sections 22 and 23, *ante*, relating to parents' and relatives' death benefit. It limits the payment of death benefit in cases where two or more persons qualify for benefit in respect of the same death, and prevents more than one person receiving a pension in respect of the same death, in whatever capacity. It also provides for payment of gratuities to persons eligible for pension but debarred by a prior claim and lays down rules for determining the amount of a gratuity and for the apportionment of gratuity as between two or more persons entitled to it. Provision is made for the case of a person eligible for a relative's pension but for the fact that he is a child and also for cases where a person entitled to benefit dies without an award being made in his favour.

(a) **Limitation of benefit payable in respect of any death.**—This is known as "death benefit", and is dealt with in sections 19–24, *ante*. Questions under this paragraph are determined by the Minister. See section 36 (1) (a) (vi), *ante*.

(b) **Allowance under section 21.**—This section, *ante*, gives the right to an allowance in respect of children of the deceased's family, expressly subject to the provisions of this Schedule.

(c) **Pension under section 23.**—This section, *ante*, gives to certain dependent relatives of the deceased the right to a pension, gratuity or allowance, expressly subject to the provisions of this Schedule, and to the conditions laid down in the section.

(d) **Allowance under section 24.**—This section, *ante*, gives to any women having the care of the deceased's children the right to an allowance, expressly subject to the provisions of this Schedule and to the conditions laid down in the section.



(e) **Death benefit as deceased's widow or widower.**—As to this, see sections 19 and 20, *ante*. "The deceased", in relation to death benefit, means the person in respect of whose death the benefit is claimed or payable (section 88 (1), *ante*).

(f) **Regulations as to priority.**—These regulations will be made by the Minister under this Act, that is, under this sub-paragraph and under sections 86 and 87, *ante*. Section 87 provides that they are to be laid before Parliament for forty days, during which either House may annul them. Before being laid before Parliament they have to be referred to the Industrial Injuries Advisory Council under section 61 (2), *ante*. No regulations have been made under this sub-paragraph at the time of going to press. "Prescribed" means prescribed by regulations (section 88 (1), *ante*). See note (h), *infra*.

(g) **Pension as the deceased's widow, widower or parent.**—As to this, see sections 19, 20 and 22, *ante*. "Insured person" means a person employed in insurable employment (section 88 (1), *post*). As to insurable employment, see section 1 and the First Schedule, *ante*. This paragraph precludes a person from claiming a pension as a relative if another person is already entitled as a widow, widower or parent. See note (h), *infra*. He can only claim a gratuity under paragraph 3.

(h) **Right to gratuity instead of pension.**—This sub-paragraph applies to a person debarred from claiming a pension as a relative under section 23, *ante*, because another person is already similarly entitled or because he claims as a relative and another person is already entitled as a widow, widower or parent. The gratuity was introduced into sections 22 and 23, *ante*, on the Report Stage.

(i) **Provisions limiting amount of gratuity by reference to contributions to deceased's maintenance.**—These are contained in section 35 (4) (b), *ante*.

(k) **Amount and payment of gratuity.**—As to the amount of £104, see paragraph 5 of this Schedule. Payment of gratuities by instalments is also provided for by sections 22 (3) and 23 (3), *ante*.

(l) **Allowance under section 23.**—This is paid to a relative under section 23 (3) (b), *ante*, in certain conditions for thirteen weeks from the beneficiary's death at the rate of 36s. a week (section 23 (4) (c), *ante*).

(m) **Allowance under section 24.**—An allowance of 20s. a week is payable under section 24, *ante*, to a woman having the care of the deceased's children. She cannot also claim under section 23, *ante*, as a relative.

(n) **Parents' gratuities not to exceed £78.**—This applies to cases where both parents are eligible for a gratuity under section 22 (3), *ante*. The sum of the two gratuities is not to exceed £78, that is one and a half times the single parent's gratuity of £52. See section 22 (4) (b), *ante*, and note (o), *infra*.

(o) **Relatives' gratuities not to exceed £104.**—These gratuities are payable under section 23 (3) (a), *ante*. The amount of £52, which represents one year's pension at 20s. a week, is fixed by section 23 (4) (b), *ante*. The sum of the gratuities payable to relatives is not to exceed £104, that is twice a single relative's gratuity of £52. As to a person being entitled to a gratuity in lieu of a pension, see paragraph 3.

(p) **Regulations as to apportioning gratuities.**—None have been made under this sub-paragraph at the time of going to press.

(q) **Child to be eligible for pension under section 23.**—See section 23 (6) and (7), *ante*, as to a relative who was a child at the deceased's death. He is, unless permanently incapable of self-support, not eligible for benefit under that section. This sub-paragraph gives power to treat him as eligible for pension while still a child if he may otherwise satisfy the conditions on ceasing to be a child. This will entitle him to claim under this Schedule as one of two or more people entitled to benefit in respect of any death. As to the meaning of "child", see note (c) to section 17, *ante*.

(r) **More than one child may become eligible for pension on ceasing to be a "child".**—For the limitation of the number of persons entitled to pension under section 23, *ante*, see paragraph 1 of this Schedule and note (a), *supra*.

(s) **Pension or gratuity on ceasing to be a "child" to be disregarded in relation to relative's gratuity.**—Paragraph 5 (2) lays down the amount of relative's gratuity. In calculating it in the case of a child already eligible as such under section 23 (6) and (7), *ante*, the fact that he may qualify in any event for a pension or gratuity is to be disregarded.

(t) **Dies within the prescribed time without being awarded benefit.**—As to this, see sub-paragraph (2). "Prescribed" means prescribed by regulations (section 88 (1), *post*).

(u) **Allowance under section 21.**—This section, *ante*, provides for an allowance of 7s. 6d. a week in respect of the child or the elder or eldest child of the deceased.

(v) **Death of person on whose entitlement an award was based not to affect that award.**—If an award is made in favour of a woman having the care of the deceased's children, for example, under section 24, *ante*, and at the same time there is a child of the deceased who would be eligible for benefit but for the fact that he was a "child", the death of the child does not affect the award in favour of the woman



unless as a result of the child's death her award is reviewed and a further award of benefit of a different description made, for example, an award to her as an adult relative under section 23, *ante*.

(w) **Appeal or review.**—As to appeals, see sections 37, 46 and 47, *ante*. As to reviews, see sections 37, 40 and 50, *ante*.

(x) **Claim.**—"Claim" by section 88 (1), *ante*, includes a claim for a declaration that an accident was or was not an industrial accident (section 49, *ante*) and, in relation to the review of an award or decision, a claim by a beneficiary under the award or affected by the decision.

#### FIFTH SCHEDULE

##### Section 54.

##### SCALE OF SUPERANNUATION ALLOWANCES OF COMMISSIONER AND DEPUTY COMMISSIONERS

When the number of completed years of service is as specified in the first column of the following table, the annual allowance shall not exceed the fraction of the last annual salary respectively specified in the second column of that table:—

<i>Years of service</i>	<i>Fraction of salary</i>
less than 5	Six-thirtieths.
5	Ten-thirtieths.
6	Eleven-thirtieths.
7	Twelve-thirtieths.
8	Thirteen-thirtieths.
9	Fourteen-thirtieths.
10	Fifteen-thirtieths.
11	Sixteen-thirtieths.
12	Seventeen-thirtieths.
13	Eighteen-thirtieths.
14	Nineteen-thirtieths.
15 or more	Twenty-thirtieths.

#### NOTES

**General effect of Schedule.**—This Schedule was added in Committee in the House of Lords. It relates to section 54, *ante*, and sets out the scale of the superannuation allowances payable to the Commissioner and deputy Commissioners under that section. It is exactly the same as the Sixth Schedule to the National Insurance Act, 1946.

The scale is based on the number of years' service up to fifteen, rising by the specified number of thirtieths of the salary in accordance with the years served.

#### SIXTH SCHEDULE

##### Section 64.

##### DOCUMENTS EXEMPT FROM STAMP DUTY

1. Draft or order or receipt given in respect of benefit payable under this Act or under any supplementary scheme, or in respect of any sums payable to the body charged with the administration of a supplementary scheme (*a*).

2. Letter or power of attorney granted by any person as trustee for the transfer of any money vested in his name in the public funds or in any other securities and forming part of any funds applicable for the purpose of any supplementary scheme (*b*).

3. Agreement, bond or other security made or given for the purpose of, or in connection with, any supplementary scheme (*c*).

4. Appointment or revocation of appointment of an agent, appointment of a new trustee, and any conveyance or transfer made for effectuating the appointment of a new trustee and any other document authorised by or in pursuance of this Act or of any supplementary scheme or otherwise required in order to give effect to the provisions of this Act, including a statutory declaration (*d*).

5. Receipt given in respect of a refund or return of contributions or fees paid under this Act (*e*).

#### NOTES

**General effect of Schedule.**—This Schedule was added on the Report Stage and implements section 64, *ante*. As originally drafted, that section was self-contained, merely exempting drafts or orders for the payment of benefit, and receipts for benefit or refunds of contributions or fees. When section 83, *ante*, was added to the Bill on the Report Stage, empowering the Minister to approve supplementary schemes, it became necessary to exempt a number of other documents and this was more conveniently done by a Schedule, referred to in section 64, *ante*. The Seventh Schedule to the National Insurance Act, 1946, is exactly the same.

(a) **Draft or order or receipt for benefit.**—It is doubtful whether duty would be chargeable on such a draft or order, even without this section. See Exemption 9



under the heading BILL OF EXCHANGE in the First Schedule of the Stamp Act, 1891; 16 Halsbury's Statutes 663. Documents given in respect of benefit will presumably be in a form prescribed by regulations. The duty on a receipt would have been 2d. (Stamp Act, 1891, First Schedule, RECEIPT; 16 Halsbury's Statutes 678) if the amount was £2 or upwards. As to supplementary schemes generally, see section 83, *ante*. As to the body charged with the administration of a supplementary scheme, see section 82 (3) (b), *ante*. Sums payable to such a body will include contributions and refunds of overpaid benefit.

(b) **Letter or power of attorney relating to funds of supplementary scheme.**—Letters or powers of attorney of several classes are normally dutiable under the First Schedule of the Stamp Act, 1891, heading LETTER OR POWER OF ATTORNEY, etc.; 16 Halsbury's Statutes 673; the duty is 10s. on such a letter as this. Other classes are exempt; *ibid.* 674. A power of attorney is an authority under seal appointing an agent who has to execute a deed. See, generally, 1 Halsbury's Laws (2nd Edn.) 202 *et seq.* As to funds applicable for the purpose of any supplementary scheme, see section 83, *ante*.

(c) **Agreement, bond, etc., relating to supplementary scheme.**—This is a very wide class of documents, presumably covering almost anything from the service agreement of the secretary of a scheme to the bond required to be given by a treasurer. Presumably it is not intended to cover, for example, a tenancy agreement relating to the administrative office, though it is doubtful just how much limitation ought to be put upon the words. Agreements are dutiable under several headings AGREEMENT in the First Schedule of the Stamp Act, 1891; 16 Halsbury's Statutes 659; with certain specified exemptions. Bonds are similarly dutiable under several headings BOND; *ibid.* 663–665. The duty varies.

(d) **Appointment, etc., of agent or trustee.**—An agent not requiring to be appointed by power of attorney (see note (b), *supra*) need not be appointed in writing unless the contract is otherwise by law required to be in writing. If he is, the agreement would normally be chargeable with 6d. duty under the heading AGREEMENT in the First Schedule to the Stamp Act, 1891; 16 Halsbury's Statutes 659. An appointment of a new trustee would be dutiable (10s.) under the heading APPOINTMENT; *ibid.* 660. A conveyance or transfer would be dutiable (various amounts) under the headings CONVEYANCE OR TRANSFER; *ibid.* 666–667. A statutory declaration would be dutiable (2s. 6d) under the heading AFFIDAVIT; *ibid.* 658. A statutory declaration means a declaration made by virtue of the Statutory Declarations Act, 1835; 8 Halsbury's Statutes 194 (Interpretation Act, 1889, sections 3, 21; 18 Halsbury's Statutes 993, 1001).

(e) **Receipt for refund or return of contributions or fees.**—The duty would be 2d. (Stamp Act, 1891, First Schedule, RECEIPT; 16 Halsbury's Statutes 678) if the amount was £2 or upwards. As to a refund or return of contributions, see the Second Schedule, Part III, *ante*; as to fees, see section 65, *ante*. These fees might be returned to the insured person or employer in certain circumstances, as might the fees for birth, etc., certificates under section 63, *ante*. The paragraph only applies to refunds or returns under the Act and not to those made under a supplementary scheme.

## SEVENTH SCHEDULE

### Section 84.

#### CONSTITUTION ETC. OF JOINT AUTHORITY

1. The Joint Authority (a) shall be a body corporate (b) by the name of "the Industrial Injuries Joint Authority", and shall have an official seal which shall be officially and judicially noticed (c), and the seal of the Authority may be authenticated by either member of, or the secretary to, the Authority (d), or by any person authorised by the Authority to act on behalf of the secretary.

2. Either member of the Joint Authority shall be entitled, subject to and in accordance with any rules laid down by the Authority, to appoint a deputy to act for him at meetings of the Authority at which he is unable to be present.

3. The Documentary Evidence Act, 1868, shall apply to the Joint Authority as if that Authority were included in the first column of the Schedule to the said Act, and as if either member or the secretary, or any person authorised to act on behalf of the secretary, of the Authority were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any document issued by the Authority (e).

#### NOTES

**General effect of Schedule.**—This Schedule was added on the Report Stage in consequence of the amendments to section 84, *ante*, which empowers the Joint Authority to be constituted, consisting of the Minister and the appropriate authority (probably the Minister of Labour) in Northern Ireland, for the purpose of co-ordinating the scheme set up by this Act with the scheme to be set up in Northern Ireland by local legislation.



The Schedule also brings this Act into line with the National Insurance Act, 1946, the Eighth Schedule to which is exactly the same, except for the name of the Authority.

(a) **The Joint Authority.**—As to its composition and functions, see section 84, *ante*.

(b) **Body corporate.**—As to bodies corporate, see note (p) to section 67, *ante*.

(c) **Official seal and its effect.**—Cf. the Ministry of National Insurance Act, 1944, section 5; 37 Halsbury's Statutes 80; as an example of a similar provision.

As to judicial notice, see generally, 13 Halsbury's Laws (2nd Edn.) 609 *et seq.* and 624. Judicial notice is the cognisance taken by the Court itself of certain matters that are so notorious (e.g., that the sun rises and sets) or clearly established (e.g., that the earth is round) that evidence of their existence is unnecessary, or of matters of which it is provided by statute that judicial notice shall be taken (e.g., the seals of Ministers). Official notice is similar cognisance taken by Government departments in the course of their official business.

(d) **Either member of, or the secretary to, the authority.**—The two members will be the Minister, and the appropriate authority in Northern Ireland. See section 84 (2), *ante*. The secretary will presumably be appointed under the arrangements between them.

(e) **Application of Documentary Evidence Act, 1868.**—This Act, by section 2 and the Schedule; 8 Halsbury's Statutes 230, 232; provides that *prima facie* evidence of any proclamation, order or regulation issued by or under the authority of any such department or offices of the Government as is mentioned in the Schedule may be given in all courts of justice and legal proceedings by the production of the Gazette containing it, or of a King's Printer's copy, or of a certified copy in the case of a Royal or Privy Council proclamation, order or regulation. The Schedule has been enlarged by a number of Acts and this provision makes one more addition to the list.

#### EIGHTH SCHEDULE

##### Section 84.

##### PROVISIONS WHICH MAY BE APPLIED FOR PURPOSES OF NORTHERN IRISH LEGISLATION

<i>Provision</i>	<i>Subject matter</i>
Subsection (4) of section three	Penalty for not paying contributions.
Subsection (2) of section four	Penalty for unlawful deduction of employer's contribution.
Section twenty-six .. ..	Obligations of employers.
Section twenty-eight .. ..	Benefit to be inalienable.
Subsections (2) to (6) of section sixty-two	Powers of inspectors.
Section sixty-three .. ..	Proof of age, marriage and death.
Section sixty-four .. ..	Exemption from stamp duty.
Section sixty-seven .. ..	General provisions as to offences and penalties.
Section sixty-eight .. ..	General provisions as to prosecutions.
Section sixty-nine .. ..	Recovery of contributions on prosecutions.
Section seventy .. ..	Civil proceedings to recover sums due to Industrial Injuries Fund.
Section seventy-one .. ..	Priority of contributions in winding up and bankruptcy.
Section seventy-two .. ..	Decisions to be conclusive for purposes of proceedings under Act.

#### NOTES

**General effect of Schedule.**—This Schedule relates to section 84, *ante*, which empowers the Minister to make arrangements with the appropriate authority in Northern Ireland for co-ordinating this system of insurance with any system introduced there by legislation passed by the Parliament of Northern Ireland, and to make the provisions here set out applicable also for the purposes of the Northern Irish legislation. Cf. the Sixth Schedule of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 575. The National Insurance Act, 1946, does not contain a Schedule corresponding with this one.



NINTH SCHEDULE

Section 88.

ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
5 Edw. 7. c. 10.	The Shipowners' Negligence (Remedies) Act, 1905.	Subsection (4) of section one.
3 & 4 Geo. 5. c. 20.	The Bankruptcy (Scotland) Act, 1913.	Paragraph (d) of subsection (1) of section one hundred and eighteen.
4 & 5 Geo. 5. c. 59.	The Bankruptcy Act, 1914.	Paragraph (d) of subsection (1) of section thirty-three.
9 & 10 Geo. 5. c. 22.	The Disabled Men (Facilities for Employment) Act, 1919.	The whole Act.
13 & 14 Geo. 5. c. 42.	The Workmen's Compensation Act, 1923.	The whole Act except subsections (2) and (3) of section twenty-eight.
15 & 16 Geo. 5. c. 84.	The Workmen's Compensation Act, 1925.	The whole Act.
16 & 17 Geo. 5. c. 48.	The Workmen's Compensation Act, 1926.	The whole Act.
17 & 18 Geo. 5. c. 35.	The Sheriff Courts and Legal Officers (Scotland) Act, 1927.	Sections fifteen and seventeen.
18 & 19 Geo. 5. c. 24.	The Northern Ireland (Miscellaneous Provisions) Act, 1928.	Subsection (4) of section two.
19 & 20 Geo. 5. c. 23.	The Companies Act, 1929.	Paragraph (d) of subsection (1) and subsection (2) of section two hundred and sixty-four and paragraph (b) of subsection (3) of section two hundred and ninety-eight.
20 & 21 Geo. 5. c. 28.	The Finance Act, 1930.	In section forty-four, the words " (14(A)) Receipt given in respect of any sum payable as compensation under the Workmen's Compensation Act, 1925 ".
20 & 21 Geo. 5. c. 29.	The Workmen's Compensation (Silicosis and Asbestosis) Act, 1930.	The whole Act.
21 & 22 Geo. 5. c. 18.	The Workmen's Compensation Act, 1931.	The whole Act.
24 & 25 Geo. 5. c. 23.	The Workmen's Compensation (Coal Mines) Act, 1934.	The whole Act.
24 & 25 Geo. 5. c. 34.	The Adoption of Children (Workmen's Compensation) Act, 1934.	The whole Act.
24 & 25 Geo. 5. c. 53.	The County Courts Act, 1934.	In section one hundred and sixty-five the words " and paragraphs 1 and 3 of the Second Schedule to the Workmen's Compensation Act, 1925 ".
1 Edw. 8. & 1 Geo. 6. c. 67.	The Factories Act, 1937.	Subsection (9) of section one hundred and twenty-six and subsection (14) of section one hundred and fifty-six.
1 & 2 Geo. 6. c. 27.	The Workmen's Compensation (Amendment) Act, 1938.	The whole Act.
2 & 3 Geo. 6. c. 82.	The Personal Injuries (Emergency Provisions) Act, 1939.	In paragraph (a) of subsection (1) of section three the words " the Workmen's Compensation Acts, 1925 to 1938 or ".
3 & 4 Geo. 6. c. 47.	The Workmen's Compensation (Supplementary Allowances) Act, 1940.	The whole Act.



Session and Chapter	Short title	Extent of repeal
3 & 4 Geo. 6. c. 56.	The Workmen's Compensation and Benefit (Byssinosis) Act, 1940.	The whole Act except section two.
4 & 5 Geo. 6. c. 39.	The National Health Insurance, Contributory Pensions and Workmen's Compensation Act, 1941.	Part II.
6 & 7 Geo. 6. c. 6.	The Workmen's Compensation Act, 1943.	The whole Act, except sections two, three and four.
6 & 7 Geo. 6. c. 49.	The Workmen's Compensation (Temporary Increases) Act, 1943.	The whole Act.
8 & 9 Geo. 6. c. 28.	The Law Reform (Contributory Negligence) Act, 1945.	Section two and in section four the definitions of "employer" and "workman".
8 & 9 Geo. 6. c. 41.	The Family Allowances Act, 1945.	In subsection (1) of section thirteen, paragraph (a) and the words "a supplementary allowance" and "supplementary allowance"; in subsection (2) of that section the words "a supplementary allowance" and "supplementary allowance", where they first occur, and the words from the beginning of paragraph (a) to the word "afore-said" in paragraph (b); subsections (3) and (4) of that section.
9 & 10 Geo. 6. c. 16.	The Workmen's Compensation (Pneumoconiosis) Act, 1945.	The whole Act.
9 & 10 Geo. 6. c. 28.	The Assurance Companies Act, 1946.	Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section five; paragraph (b) of sub-paragraph (2) of paragraph 3 of Part III of the Second Schedule.

#### NOTES

**General effect of Schedule.**—This Schedule sets out the enactments repealed by section 89 (1), *ante*. The reference to section 88 of the Act as printed is a misprint for section 89. They are for the most part the enactments which constituted the Workmen's Compensation scheme. Cf. the Seventh Schedule of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 576.

This Schedule corresponds with the Ninth Schedule to the National Insurance Act, 1946.



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