

**(3) Byssinosis (Workmen's Compensation) Scheme**

THE BYSSINOSIS (WORKMEN'S COMPENSATION) SCHEME, 1941, DATED APRIL 14, 1941, MADE BY THE SECRETARY OF STATE UNDER THE WORKMEN'S COMPENSATION AND BENEFIT (BYSSINOSIS) ACT, 1940 (3 & 4 GEO. 6. C. 56).

**1941 No. 526**

In pursuance of the powers conferred on me by Section I of the Workmen's Compensation and Benefit (Byssinosis) Act, 1940, I hereby make the Scheme of Compensation annexed hereto.

*Herbert Morrison,*

One of His Majesty's Principal Secretaries of State.

Home Office,  
Whitehall,  
14th April, 1941.

THE BYSSINOSIS (WORKMEN'S COMPENSATION) SCHEME, 1941

1. *Title of Scheme.*—This Scheme may be cited as "The Byssinosis (Workmen's Compensation) Scheme, 1941".

2. *Commencement and Application of Scheme.*—This Scheme shall come into force on the 1st May, 1941, and shall apply to all male workmen employed at any time on or after that date in cotton rooms, blowing rooms or card rooms, in factories in which the spinning of raw cotton is carried on.

3. *Definitions.*—In this Scheme, unless the context otherwise requires :—

"The employment" means any employment in cotton rooms, blowing rooms, or card rooms, in factories in which the spinning of raw cotton is carried on.

The "Act" means the Workmen's Compensation Act, 1925.

15 & 16 Ge

"The disease" means the respiratory disease known as byssinosis.

5. C. 84.

"Medical Board" means the Medical Board appointed by the Secretary of State under this Scheme.

"Administrative Board" means the Administrative Board set up by the Secretary of State under this Scheme.

"Prescribed" means prescribed by the Secretary of State.

"Regulations" means the Regulations made by the Secretary of State, prescribing the fees to be paid under this Scheme.

PART I.—RIGHT TO COMPENSATION

4. Where—

(a) the Administrative Board certify that a workman to whom this Scheme applies has been employed for a period of or periods amounting in the aggregate to not less than 20 years in the employment, and

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- (b) the Medical Board certify that the workman has become totally and permanently incapacitated for work as the result of the disease or that the death of the workman has been caused by the disease ;

compensation shall, subject to the provisions of this Scheme, be payable to the workman or to his dependants as the case may be, as if the disease were a personal injury by accident arising out of and in the course of the employment, and the Act shall apply accordingly except in so far as it may be varied by or may be inconsistent with the provisions of this Scheme.

Provided that no compensation shall be payable in cases where the workman has not been employed in the employment at any time within the twelve months previous to the date of disablement.

5. For the purposes of this Scheme the date of disablement shall be the date from which the workman is certified by the Medical Board to have become totally and permanently incapacitated for work as the result of the disease, or if they are unable to certify such a date, the date on which the certificate is given.

Provided that where a workman dies without having obtained a certificate from the Medical Board or is at the time of death not in receipt of a weekly payment in respect of total and permanent incapacity under this Scheme, it shall be the date of death.

3 & 4 Geo.  
6. c. 47.

6.—(1) The Workmen's Compensation (Supplementary Allowances) Act, 1940, shall, except as provided below, apply to any workman entitled to a weekly payment by way of compensation under this Scheme as if such weekly payment were a weekly payment in respect of total incapacity under the Workmen's Compensation Act, 1925.

(2) Subsections (1) to (5) of section 2 of the Act of 1940 shall not apply to supplementary allowances payable under this Scheme, but the supplementary allowances may be redeemed upon such terms as the Administrative Board may approve, and the Administrative Board, in considering whether redemption of the allowances is desirable, shall have regard to the interests of any children in respect of whom allowances are payable.

7. Where a workman claims to be totally and permanently incapacitated by the disease, the employer from whom compensation is recoverable may agree with the workman that he is liable to pay compensation under this Scheme without requiring the workman to obtain a certificate from the Medical Board, and thereupon the workman shall be entitled to compensation as from the date of the agreement or from such other date as may be agreed.

8. The compensation shall be claimed and recoverable from the employer who last employed the workman in the employment, but any other employers who so employed the workman during the five years preceding the date of disablement shall, unless they had at the commencement of this Scheme ceased to carry on the spinning of raw cotton, be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined by the Administrative Board.

An employer shall not be liable to make any contribution under this paragraph :—

- (i) in any case where the employer from whom compensation is recoverable has agreed under the preceding paragraph to pay compensation without requiring a certificate from the Medical Board ; or
- (ii) in respect of any period of employment more than twelve months previous to the commencement of this Scheme.

#### PART II.—AMOUNT OF COMPENSATION

**9.**—(1) The compensation payable under this Scheme shall be determined in accordance with the provisions contained in the Act for fixing the compensation in cases of death or total incapacity.

(2) In the application of the aforesaid provisions of the Act the amount of compensation shall be calculated with reference to the earnings of the workman under the employer from whom compensation is recoverable under this scheme.

#### PART III.—CONDITIONS OF COMPENSATION

**10.** Section 14 of the Act shall not apply in cases of death or total incapacity arising under this Scheme but it shall be the duty of a workman desiring to claim compensation under this Scheme to make application to the Administrative Board for a warrant authorising him to be examined by the Medical Board as soon as possible after he has ceased to be employed in the employment.

**11.** Section 12 of the Act shall not apply to weekly payments payable under this Scheme but where representation is made by or on behalf of an employer to the Administrative Board that a workman in receipt of weekly payments under this Scheme is no longer totally incapacitated for work as the result of the disease, the Board may, after making such inquiries as they think proper, issue a warrant for his re-examination by the Medical Board and may if they think fit suspend the weekly payments pending such re-examination as from such date as they deem proper ; provided that a workman shall not be required under this paragraph to be re-examined by the Medical Board within six months of his last examination by the Board.

If the Medical Board certify on such re-examination that the workman is no longer totally incapacitated for work as a result of the disease, the workman shall cease to be entitled to weekly payments under this Scheme as from the date of the certificate or, if the weekly payments have been suspended, from the date when they were suspended (but without prejudice to the rights of the workman to further compensation under this Scheme if he is again found by the Medical Board to be totally and permanently incapacitated as the result of the disease) ; and if the Medical Board do not certify as aforesaid, any weekly payments which have been suspended shall be paid forthwith.

Sections 17, 18 and 19 of the Act shall not apply in relation to compensation under this Scheme.

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12. It shall be the duty of every workman to submit himself to examination by the Medical Board when so directed by that Board or by the Administrative Board in accordance with this Scheme, and for that purpose (unless certified by a duly qualified medical practitioner to be unfit to travel) to attend at the place and time specified by the Medical Board; and if a workman refuses or wilfully neglects to submit himself to any such examination or in any way obstructs the same he shall forfeit any right to compensation under this Scheme.

Provided that if the Administrative Board are satisfied that the failure of the workman to comply with any of the requirements of this paragraph has been due to a *bona fide* mistake on his part or other reasonable cause, it shall be in the discretion of the Board to relax this provision on such conditions and to such extent as they may think fit.

13. It shall be the duty of every workman or his dependants claiming compensation under this Scheme to furnish to the Administrative Board on their request full and true information as to the periods during which he has been in the employment, the precise occupations in which and the addresses at which he has been employed in the employment. If a workman or his dependants furnish to the Board false information or withhold from the Board information as aforesaid, he or they, as the case may be, shall forfeit any right to compensation under this Scheme.

Provided that if the Administrative Board are satisfied that the failure of the workman or his dependants to comply with any of the requirements of this paragraph has been due to a *bona fide* mistake on his or their part or other reasonable cause, it shall be in the discretion of the Board to relax this provision on such conditions and to such extent as they may think fit.

14. If a workman receiving weekly payments under this Scheme ceases to reside in the United Kingdom, the Channel Islands or the Isle of Man, he shall be entitled, in lieu of being paid the compensation weekly, to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he satisfies the Administrative Board as to his identity and as to the continuance of the incapacity in respect of which the compensation is payable.

### PART IV.—PROCEDURE FOR DETERMINING COMPENSATION AND FOR SETTLING QUESTIONS

15. Sections 21 to 26 of the Act shall not apply in relation to compensation under this Scheme, but any question as to the liability to pay compensation under this Scheme and as to the amount and apportionment of the compensation and, except as otherwise provided in this Scheme, any other questions arising under this Scheme shall in the absence of agreement be determined by the Administrative Board. Particulars of every agreement under this Scheme shall be notified to the Administrative Board and no agreement for the payment of a lump sum in redemption of the weekly payment shall be valid unless it has been approved in writing by the Board.

16. The determination by the Administrative Board of any question assigned to them for determination under this Scheme shall be final ; but for the purpose of deciding any question of law the provisions of paragraph 4 of the First Schedule to the Act shall apply as if the Administrative Board were a representative committee under section 21 of the Act.

17. The power of making rules of Court under the Act shall include a power to make such rules as may be necessary for the purpose of carrying this Scheme into effect.

PART V.—ADMINISTRATIVE BOARD

18. There shall be established for the determination of all questions assigned to them under this Scheme and for the discharge of any other duties which may be imposed on them by this Scheme, an Administrative Board, that is to say a Board representative of both employers and workmen, presided over by an independent chairman, which shall exercise jurisdiction in accordance with such procedure as may be prescribed by rules made by the Secretary of State.

19. The Chairman and other members of the Administrative Board shall be appointed by the Secretary of State and shall hold office for such period as he may fix and shall be eligible for re-appointment.

The proceedings of the Board shall not be invalidated by any vacancy in their number or by any defect in the appointment of any member of the Board.

20. In the absence of the Chairman at any meeting the Chair may be occupied by any member of the Administrative Board chosen by the members present at the meeting.

21. Any question arising at any meeting may be decided by a majority of the votes of those present at the meeting, excluding the independent Chairman, or, in the case of an equality of votes, by a casting vote of the independent Chairman.

22. The Chairman and members of the Administrative Board shall be entitled to be reimbursed from the Expenses Fund such travelling and other reasonable expenses incurred by them in attending meetings of the Board or otherwise in carrying out their duties under this Scheme, as the Secretary of State may approve.

23.—(1) The Administrative Board shall be assisted by an executive officer, hereinafter referred to as the Secretary of the Board, who shall be appointed by the Secretary of State after consultation with the Board, on such terms as to remuneration or otherwise as the Secretary of State may approve.

(2) It shall be the duty of the Secretary of the Administrative Board, subject to the directions of the Board and to any rules of the Secretary of State as to the procedure of the Board and as to his duties—

- (a) to keep a record of the proceedings of the Administrative Board; to make inquiries as to the history of workmen applying for medical examination or whose dependants apply for compensation when the workman has not already been certified under this Scheme; to issue any certificate or warrant for medical examination authorised by the Board; to notify the decisions of the Board to the persons concerned, and to perform such other duties as may be assigned to him under this Scheme or any rules made thereunder;
- (b) to make such arrangements as are necessary for the sittings of the Medical Board, to keep a record of the examinations made by the Medical Board and the action taken thereon; and generally to assist the Medical Board in the discharge of their duties under this Scheme; and
- (c) to collect and recover any fees or other moneys due to the Expenses Fund and to take any steps necessary for that purpose, to make the payments out of the Fund as authorised under this Scheme, and to keep full and true accounts showing the sums received by or due to the Fund from any source and all amounts paid out of the Fund.

**24.**—(1) The independent chairman of the Administrative Board shall have power if the Board so resolve, and on such terms as may be specified in the resolution, to authorise the payment of compensation under this Scheme. Any such authorisation shall be subject to confirmation by the Administrative Board at the next meeting of the Board.

(2) If the Administrative Board so resolve, the independent chairman shall have power to issue on their behalf any certificates or warrants which may be issued by the Administrative Board under this Scheme, and to carry out such other duties or exercise such other functions on their behalf, as may seem appropriate.

**25.** The Administrative Board shall furnish to the Secretary of State annually, or at such other intervals as he may prescribe, a return as to the proceedings of or before the Board.

#### PART VI.—MEDICAL BOARD

**26.** A Medical Board consisting of specially qualified Medical practitioners shall be appointed by the Secretary of State for the purpose of making the medical examinations and giving the medical certificates required to be made or given by the Medical Board in pursuance of this Scheme.

The Members of the Medical Board shall hold office on such terms as to remuneration and otherwise as the Secretary of State may approve, and shall be responsible to the Secretary of State for carrying out their duties in accordance with the procedure laid down in this Scheme and in compliance with any instructions issued by him.

**27.** Where in pursuance of this Scheme a certificate is required to be given by the Medical Board, such certificate shall not be given except with the authority of not less than two members of the Board.

28. Any certificate given by the Medical Board in pursuance of the provisions of this Scheme shall be conclusive evidence of the matters therein certified and a certificate purporting to be signed on behalf of the Board shall be accepted in any proceedings under this Scheme as *prima facie* evidence of such certificate.

29. The Medical Board shall forward all certificates given in pursuance of this Scheme to the Secretary of the Administrative Board.

*Medical Examinations*

30. Any workman desiring to claim compensation in pursuance of this Scheme in respect of total and permanent incapacity for work may apply to the Administrative Board for a warrant authorising him to be examined by the Medical Board, and on production of such warrant the Medical Board shall examine the workman and, if satisfied that he is totally and permanently incapacitated for work as the result of the disease, shall certify accordingly in the prescribed form.

31. Where the Administrative Board, on representation made under paragraph 11 of this Scheme, issue a warrant for the re-examination of a workman who has been certified under this Scheme to be totally and permanently incapacitated as the result of the disease the Medical Board shall re-examine the workman and give a fresh certificate in the prescribed form confirming or amending the previous certificate.

32. In case of death alleged to be due to the disease the dependants of the deceased workman may, with a view to claiming compensation under this Scheme, make application to the Medical Board for a certificate that the death of the workman has been so caused, and on such application the Board shall, after a post-mortem examination, certify in the prescribed form whether or not the death of the workman has been so caused.

Provided that where, at the time of his decease, weekly payments under this Scheme were payable to the workman, but only in such cases, the Medical Board may, if satisfied that a post-mortem examination is unnecessary, give a certificate without such examination.

The post-mortem examination shall, if possible, be made by or in the presence of a member of the Medical Board.

33. When the Medical Board receive a warrant for an examination or re-examination of a workman under this Scheme or any application under paragraph 32, they shall give notice thereof to such persons concerned as may be prescribed in any Rules made by the Secretary of State under this Scheme and shall before coming to their conclusion on the case consider any statement made or submitted in writing by or on behalf of any such person within fourteen days from the date of the notice.

34. The Medical Board shall have power, subject to any general directions of the Secretary of State, in any case where they consider necessary, to make or cause to be made a radiographic examination of the lungs of the workman and to obtain the report of a radiologist or other expert assistance on the case.

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### PART VII.—EXPENSES FUND AND FEES

**35.** There shall be established for the purposes of this Scheme an Expenses Fund which shall be administered by the Administrative Board, into which shall be paid by or on behalf of the employer and workmen or their dependants such fees in respect of examinations made and certificates given by the Medical Board and in respect of the functions of the Administrative Board in pursuance of this Scheme as may be prescribed by the Regulations.

There shall be paid out of the Expenses Fund :—

- (1) Such expenses (including office expenses and remuneration of its officers) incurred by the Administrative Board for the purposes of this Scheme as the Secretary of State may approve.
- (2) Such fees or other payments to or on behalf of the Medical Board as may be approved by the Secretary of State to remunerate the Board for their services as respects medical examinations made and certificates given under this Scheme, and to meet expenses necessarily incurred by the Board in obtaining special expert assistance, or otherwise for the purposes of their duties under this Scheme.
- (3) Any travelling or other expenses reasonably incurred by a workman (subject to any scale approved by the Secretary of State) in submitting himself for examination when so required by the Medical Board.

**36.** The Administrative Board shall cause the Accounts of the Fund to be audited at least once in every year by an auditor appointed by the Secretary of State.

#### *Fees*

**37.**—(1) All such fees as may be prescribed by the Regulations in respect of the functions of the Administrative Board or the Medical Board shall be payable by or on behalf of the employer or workman or his dependants as the case may be, to the Secretary of the Administrative Board in accordance with such arrangements as may be prescribed in the Regulations and shall be paid over by him to the Expenses Fund.(a)

(2) Where a fee is prescribed by the Regulations as payable by or on behalf of an employer, the employer liable to pay the said fee shall, except as otherwise provided by the Regulations, be the employer from whom the compensation due to the workman is recoverable.

(3) Any sum due to the Fund under this Scheme may be recovered summarily or otherwise, as a civil debt.

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(a) See S.R. & O. 1941 No. 527, p. 578 below.

PART VIII.—MISCELLANEOUS PROVISIONS

38. The compensation payable in case of death shall be paid to the person nominated by the Administrative Board and approved by the Secretary of State to hold monies in Trust under this Scheme or failing such person to the Public Trustee, and shall, subject to any general or special directions of the Administrative Board, be held and applied by him as he thinks best for the benefit of the persons entitled thereto under this Scheme.

Provided that—

- (i) where the sum payable is less than £50 it may be paid over to the persons entitled thereto in such weekly payments or otherwise as the Board may direct, and
- (ii) where the workman leaves no dependants the expenses of medical attendance and burial shall be paid to his legal personal representative or, if he has no such representative, to the person who has paid, or incurred liability for, such expenses.

39. Where it appears to the Administrative Board on application by the person charged with the administration of the Trust, that on account of the variation of the circumstances of the various dependants or for any other sufficient cause any order made by the Board as to the apportionment amongst the several dependants, or any directions given as to the administration, of any sum paid as compensation ought to be varied, the Board may vary such order or directions in such manner as in the circumstances of the case the Board may think just.

40. Where a weekly payment is payable under this Scheme to a person under any legal disability, the Administrative Board may direct that the weekly payment shall be paid during the disability to any person nominated by the Board for the purpose, or failing such person to the Public Trustee, to apply, subject to any directions of the Board, as in his discretion he thinks best for the benefit of the person entitled thereto.

41. The provisions of sections 51, 52 (1) and 53 and, notwithstanding anything in section 40 of the Act, sub-sections (2) and (3) of section 52 of the National Health Insurance Act, 1936, shall apply to compensation under this Scheme in the same way as to compensation under the Act.

26 Geo. 5 &  
1 Edw. 8. c.  
32.

Provided that in the application of section 53 as aforesaid a workman who would otherwise be eligible for compensation under this Scheme but refuses or wilfully neglects to take the steps necessary to obtain compensation under this Scheme shall be deemed to have unreasonably refused or neglected to take proceedings within the meaning of the said section.

42. Every employer occupying a factory in which the spinning of raw cotton is carried on shall send to the Secretary of State, at such time and in such form as may be prescribed, a correct return of the number of cases in respect of which compensation has been paid by him under this Scheme during the previous year and the amount of such compensation, together with such other particulars as the Secretary of State may direct, and an employer failing to send such return shall be deemed to be in default in complying with section 42 (1) of the Act.