STATUTORY RULES AND ORDERS.

1931, No. 344.

MASTER AND SERVANT.

Workmen's Compensation Acts, 1925 to 1930.

THE ASBESTOS INDUSTRY (ASBESTOSIS) SCHEME, 1931, DATED APRIL 30, 1931, MADE BY THE SECRETARY OF STATE UNDER THE WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 GEO. 5. c. 84) AND THE WORKMEN'S COMPENSATION (SILICOSIS AND ASBESTOSIS) ACT, 1930 (20 & 21 GEO. 5. c. 29).

In pursuance of the powers conferred on me by section 47 of the Workmen's Compensation Act, 1925, as extended by section 1 of the Workmen's Compensation (Silicosis and Asbestosis) Act, 1930, I hereby make the Scheme of Compensation annexed hereto.

J. R. Clynes,
One of His Majesty's Principal Secretaries of State.

Home Office,
Whitehall,
30th April, 1931.

THE ASBESTOS INDUSTRY (ASBESTOSIS) SCHEME, 1931.

1. *Title of Scheme.*—This Scheme may be cited as "The Asbestos Industry (Asbestosis) Scheme, 1931."

2. *Commencement and Application of Scheme.*—This Scheme shall come into force on the 1st June, 1931, and shall apply to all workmen employed at any time on or after 1st May, 1931, in any of the following processes:—

(i) breaking, crushing, disintegrating, opening and grinding of asbestos, and the mixing or sieving of asbestos, or any admixture of asbestos, and all processes involving manipulation of asbestos incidental thereto;

(ii) all processes in the manufacture of asbestos textiles, including preparatory and finishing processes;

"Asbestos textiles" means yarn or cloth composed of asbestos or asbestos mixed with any other material.

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(iii) the making of insulation slabs or sections, composed wholly or partly of asbestos, and processes incidental thereto;

(iv) the making or repairing of mattresses, composed wholly or partly of asbestos, and processes incidental thereto;

(v) any other manufacturing process carried on in the same room as any of the foregoing processes;

(vi) sawing, grinding and turning in the dry state of articles composed wholly or partly of asbestos in the manufacture of such articles.

(vii) the cleaning of any machinery or other plant used in any of the foregoing processes and of any chambers, fixtures and appliances for the collection of asbestos dust.

Provided that nothing in this Scheme shall apply to the employment of any workman—

(*a*) in the process of mixing of asbestos or any admixture of asbestos or in any process specified in (vi) or any cleaning of machinery or other plant used in connexion with any process so specified, if such employment is occasional only and for not more than eight hours in any week; or

(*b*) in sawing, grinding or turning of articles composed wholly or partly of woven asbestos impregnated with bitumen or other bond of an adhesive nature.

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

"Processes" means any of the processes mentioned in paragraph 2.

"The Act" means the Workmen's Compensation Act, 1925, as extended by the Workmen's Compensation (Silicosis and Asbestosis) Act, 1930.

The expressions "employer", "workman", and "dependants" have the same meanings as in the Act.

"Medical Board" means the Medical Board appointed by the Secretary of State under the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931,(a).

"Prescribed" means prescribed by the Secretary of State.

"Tuberculosis" means tuberculosis of the lungs.

Part I.—Right to Compensation.

4. Where the Medical Board certify:—

(1) that the death of a workman has been caused by asbestosis or by asbestosis accompanied by tuberculosis; or

(2) that a workman is totally disabled from asbestosis or from asbestosis accompanied by tuberculosis; or

(a) S.R. & O. 1931, No. 341.

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(3) that a workman, though not totally disabled, is suffering from asbestosis or from asbestosis accompanied by tuberculosis to such a degree as to make it dangerous for him to continue work in the processes, and is for that reason suspended from employment;

and where the disease is due to employment in the processes whether under one or more employers, the workman or his dependants, as the case may be, shall be entitled to claim compensation as if the disease as aforesaid were a personal injury by accident arising out of and in the course of that employment, as provided by the Act, but subject to the modifications hereinafter contained.

Provided that no compensation shall be payable :—

(*a*) if the Medical Board certify that the asbestosis cannot have been contracted in the processes owing to the shortness of the time during which the workman has been employed therein;

(*b*) in cases where the workman has not been employed in the processes or has not been in receipt of weekly payments under this Scheme at any time within the three years previous to the date of the injury;

(*c*) in cases where the workman, or his dependants, as the case may be, are in receipt of compensation under any other scheme or enactment providing compensation for asbestosis or silicosis whether in Great Britain or elsewhere.

5. If the workman has been employed in the processes for a period or periods amounting to not less than five years, the disease shall be deemed to be due to employment in the processes unless the employer proves the contrary.

6. For the purposes of this Scheme the date of the injury shall be deemed to be the date on or from which the workman is certified to be totally disabled or, while not totally disabled, is suspended from employment or, in cases where the workman dies without having been certified to be totally disabled or suspended, the date of death.

7. Where a workman claims to be suffering from asbestosis or asbestosis accompanied by tuberculosis, the employer may agree with the workman that he is liable to pay compensation without requiring the workman to obtain a certificate from the Medical Board, and thereupon the workman shall be deemed to be suspended from employment in the processes and shall be entitled to compensation as from the date of the agreement or from such other date as may be agreed.

Any such agreement may be recorded in the manner provided by section 23 of the Act as applied by this Scheme, and shall be enforceable against the employer in like manner and subject to the same provisions as an agreement to pay compensation in case of an injury under the Act.

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8.—(1) The compensation shall be claimed and recoverable from the employer who last employed the workman in the processes; except that in the case of a newly engaged workman who is suspended from employment in the processes at an initial examination in pursuance of paragraph 12 of the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931, the employer from whom compensation shall be claimed and recoverable shall be the employer who last employed the workman in the processes previously to the new engagement.

(2) Any other employers who employed the workman in the processes during the five years preceding the date of the injury shall, unless they had at the commencement of this Scheme ceased to carry on the said processes, be liable to make to the employer for whom compensation is recoverable such contributions as, in default of agreement, may be determined by arbitration under this Scheme.

Provided that no employer shall be liable to make any such contribution—

(i) in any case where the employer from whom compensation is recoverable has admitted liability to pay compensation in pursuance of paragraph 7 of this Scheme 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) In cases of death or total disablement 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.

In cases of total disablement the compensation shall be payable from the date certified by the Medical Board as the date on which such disablement commenced, or, if the Board are unable to certify such a date, the date on which the certificate is given.

(2) In cases of suspension due to asbestosis or asbestosis accompanied by tuberculosis where the workman is not totally disabled :—

(*a*) if the Medical Board certify that the workman's general physical capacity for employment is impaired by reason of the disease, the workman shall be entitled, while impairment continues, to a weekly payment fixed in accordance with the provisions of the Act for fixing the compensation in cases of partial incapacity;

(*b*) if the Medical Board certify that the workman's general physical capacity for employment is not impaired by reason of the disease, the workman, if unable to obtain suitable employment at a rate of remuneration not less than he was earning in the processes, shall be entitled while he remains out of such employment, to such

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weekly payment as, in the absence of agreement, the County Court Judge or other arbitrator may direct.

Provided that such compensation shall not be payable for more than thirteen weeks in all, and shall in no case exceed 50 per cent. of the workman's average weekly earnings computed in accordance with the provisions of the Act.

(3) 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. The provisions as to notice of accident and claim for compensation contained in section 14 of the Act shall apply in cases of death, total disablement or suspension arising under this Scheme subject to the following modifications:—

(*a*) the employer to whom the notice is to be given shall be the employer who last employed the workman in the processes or, in the case of a newly engaged workman who is suspended from employment in the processes at an initial examination in pursuance of paragraph 12 of the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931, the employer who last employed the workman in the processes previously to the new engagement;

(*b*) the notice may be given notwithstanding that the workman has voluntarily left his employment.

11.—(1) The provisions of the Act relating to submission to medical examination, and so far as regards examinations made by a medical practitioner provided and paid by the employer, the provisions relating to suspension of the right to compensation, and any regulations (excepting those determining the fees payable to medical referees) and rules of court made thereunder, shall apply in the case of any workman claiming or in receipt of weekly payments of compensation under this Scheme, subject to the condition that no workman in receipt of such weekly payments shall be required to submit himself for examination by a medical practitioner under the said provisions more frequently than once in every three months.

Provided that any reference required to be made to a medical referee under the said provisions shall be made to the Medical Board.

(2) Where a medical examination of the workman by a medical practitioner provided and paid for by the employer is required by the employer, such examination may include a radiological examination made by such practitioner or by a radiologist selected by him.

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12. It shall be the duty of every workman—

(*a*) to submit himself to the periodic and other examinations provided for under this Scheme or the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931, 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 or the medical practitioner appointed to make the examination;

(*b*) after having been certified to be totally disabled or suspended from employment in the processes not to re-engage in employment therein or in any of the occupations mentioned in the Schedule to this Scheme except so far as may be allowed by certificate of the Medical Board.

If a workman refuses or wilfully neglects to submit himself to any such examination or in any way obstructs the same, or if, contrary to the foregoing provisions, he re-engages in employment in the processes or in any of the occupations mentioned in the said Schedule, he shall forfeit any right to compensation under this Scheme.

Provided that if the County Court Judge or other arbitrator under this Scheme is 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 his discretion to relax this provision on such conditions and to such extent as he may think fit.

13. It shall be the duty of every workman or his dependants claiming compensation under this Scheme to furnish to the employer from whom compensation is claimed, if so required, true information as to his employment with any previous employer who, within the five years preceding the date of the injury, employed him in the processes or in any of the occupations mentioned in the Schedule to this Scheme and as to whether the workman or his dependants are in receipt of compensation under any other scheme or enactment providing compensation for asbestosis or silicosis, whether in Great Britain or elsewhere.

If a workman or his dependants furnish false information or withhold information as aforesaid, he or they, as the case may be, shall forfeit any right to compensation under this Scheme.

Provided that if the County Court Judge or other arbitrator under this Scheme is 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 his discretion to relax this provision on such conditions and to such extent as he may think fit.

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Part IV.—Procedure for Settling Questions.

14.—(1) Any question as to the liability to pay compensation under this Scheme, and, except as otherwise provided in this Scheme, any other question arising under this Scheme shall be determined as though it were a question in proceedings arising under the Act; and the provisions of the Act relating to the procedure for determining compensation and settling questions and any regulations (except those determining the fees payable to medical referees) and rules of court made in pursuance thereof shall apply accordingly.

Provided that (*a*) the provisions of the Act as to the summoning of a medical referee as assessor shall not apply to cases arising under this Scheme; and (*b*) any report required in pursuance of the said provisions to be obtained from a medical referee shall be obtained from the Medical Board.

(2) 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.—Miscellaneous Provisions.

15. Any fees paid into the County Court (or in Scotland, the Sheriff Court) in respect of examinations made or certificates given by the Medical Board under any of the provisions of the Act as applied to this Scheme shall be transmitted by the Registrar of the Court (or in Scotland, the Sheriff Clerk) to the Medical Expenses Fund established under the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931, in accordance with such arrangements as may be made by the Lord Chancellor (or in Scotland, the King's and Lord Treasurer's Remembrancer).

16. The provisions of sub-sections (1), (2), (3) and (4) and, notwithstanding anything in section 40 of the Act, sub-section (5) of section sixteen of the National Health Insurance Act, 1924,(a) as amended by the National Health Insurance Act, 1928,(b) shall apply to compensation under this Scheme in the same way as to compensation under the Act.

Provided that in the application of sub-section (3) of section sixteen as aforesaid a workman who would otherwise be eligible for compensation under this Scheme but refuses or wilfully neglects to take the steps to obtain compensation under this Scheme shall be deemed to have unreasonably refused or neglected to take proceedings within the meaning of the said sub-section.

(a) 14–5 G. 5. c. 38. (b) 18–9 G. 5. c. 14.

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17. The following provisions of the Act shall so far as applicable apply to any case under this Scheme in like manner as in cases under the Act :—

(*a*) Section 6.—Liability in case of workmen employed by contractors.

(*b*) Section 7.—Provision as to cases of bankruptcy of employer.

(*c*) Section 16.—Conditions as to residence; except that any certificate required under the section shall be obtained from the Medical Board.

(*d*) Section 40.—Prohibition against charging or assigning weekly payments.

(*e*) Section 41.—Repayment of Poor Relief.

(*f*) Section 48.—Interpretation.

(*g*) Section 49.—Application to Scotland.

18. Every employer who employs any person in any of the processes shall in every year 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.

SCHEDULE.

OCCUPATIONS REFERRED TO IN PARAGRAPHS 12 (*b*) AND 13 OF SCHEME.

Any process to which the Refractories Industries (Silicosis) Scheme, 1931, (a) applies, in or in connection with the getting, handling, moving, breaking, crushing, grinding or sieving of material containing not less than 80 per cent. total silica (SiO_2) or in the manipulation of such material in the manufacture of bricks or other articles containing not less than 80 per cent. total silica (SiO_2).

Any process to which the Sandstone Industry (Silicosis) Scheme, 1931, (b) applies.

Any process to which the Metal Grinding Industries (Silicosis) Scheme, 1931,(c) applies.

Any process to which the Various Industries (Silicosis) Scheme, 1931,(d) applies.

Any occupation in a mine scheduled under the Miners' Phthisis Acts of the Union of South Africa.

(a) S.R. & O. 1931, No. 345.
(b) S.R. & O. 1931, No. 346.
(c) S.R. & O. 1931, No. 343.
(d) S.R. & O. 1931, No. 342.

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