

1991 No. 406

SOCIAL SECURITY

**The Social Security (Adjudication) (Amendment No. 2)
Regulations (Northern Ireland) 1991**

Made 30th August 1991

Coming into operation—
for the purposes of regulations 1
and 3 30th August 1991
for all other purposes 31st August 1991

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 104(5)(b) and 119(3) and (4) of the Social Security (Northern Ireland) Act 1975(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1991 and shall come into operation—

- (a) for the purposes of regulations 1 and 3 on 30th August 1991;
- (b) for all other purposes on 31st August 1991.

(2) In these regulations “the principal regulations” means the Social Security (Adjudication) Regulations (Northern Ireland) 1987(b).

(3) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly .

Amendment of the principal regulations

2.—(1) The principal regulations shall be amended in accordance with paragraphs (2) to (4).

(2) In Section D of Part IV immediately before regulation 65 (review of decisions involving payment or increase of benefit other than industrial

(a) 1975 c. 15; section 104(5)(b) was added by paragraph 9(d) of Schedule 5 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)) and amended by paragraph 11(4) of Schedule 3 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)). Section 119(3) was amended by paragraph 8 of Schedule 3 to the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)) and repealed in part by Schedule 10 to the Social Security (Northern Ireland) Order 1986 and section 119(4)(b) to (d) was repealed by Schedule 10 to the Social Security (Northern Ireland) Order 1986 with a saving by Article 4 of S.R. 1987 No. 21 (C. 3). Sections 104(5)(b) and 119(3) and (4) were extended by Article 53(3) and (6) of, and paragraph 4(1) of Schedule 7 to, the Social Security (Northern Ireland) Order 1986

(b) S.R. 1987 No. 82; relevant amending regulations are S.R. 1987 No. 466 and S.R. 1988 No. 369

(c) 1954 c. 33 (N.I.)

injuries benefit, mobility allowance, income support or family credit) there shall be inserted the following regulation—

“Date from which revised decision has effect on a review in specified circumstances

64A.—(1) In the case of a review to which either paragraph (2) or (3) applies, the decision given shall have effect from the date from which the decision being reviewed had effect or from such earlier date from which the authority which gave the decision being reviewed could have awarded benefit had that authority taken account of the evidence mentioned in paragraph (2) or not overlooked or misconstrued some provision or determination as mentioned in paragraph (3).

(2) This paragraph applies to a review of any decision under subsection (1)(a) of section 104 of the 1975 Act(a) (review on grounds of ignorance of, or mistake as to, some material fact), whether that decision was made before or after the coming into operation of this regulation, where the reviewing authority, that is to say the adjudication officer or, as the case may be, the appeal tribunal, is satisfied that—

- (a) the evidence upon which it is relying to revise the decision under review is specific evidence which was directly relevant to the determination of the claim or question and which the authority which was then determining the claim or question had before it at the time of making the decision under review but failed to take into account;
- (b) the evidence upon which it is relying to revise the decision under review is a document or other record containing such evidence which at the time of making the submission to the authority which was then to determine the claim or question, the officer of the Department who made the submission had in his possession but failed to submit; or
- (c) the evidence upon which it is relying to revise the decision under review did not exist and could not have been obtained at that time, but was produced to an officer of the Department or to the authority which made the decision as soon as reasonably practicable after it became available to the claimant.

(3) This paragraph applies to a review of any decision under subsection (1A) of section 104 of the 1975 Act(b) (review on grounds of error of law), whether that decision was made before or after the coming into operation of this regulation, where the adjudication officer or, as the case may be, the appeal tribunal, is satisfied that the adjudication officer, in giving the decision under review, overlooked or misconstrued either—

- (a) some statutory provision; or
- (b) a determination of a Commissioner or the court,

(a) Subsection (1)(a) was substituted by paragraph 9(a) of Schedule 5 to the Social Security (Northern Ireland) Order 1986

(b) Subsection (1A) was inserted by paragraph 2 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/1524 (N.I. 17)) and amended by Schedule 10 to the Social Security (Northern Ireland) Order 1986

which, had he taken it properly into account, would have resulted in a higher award of benefit or, where no award was made, an award of benefit.

(4) In this regulation—

“a Commissioner” includes a Commissioner within the meaning of Schedule 20 to the Social Security Act 1975(a);

“the court” has the same meaning as it has in section 154D of the 1975 Act(b).

(5) The provisions of this Section, including regulation 69 as continued in operation by regulation 10 of the Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1987(c) and as amended by regulation 8 of those regulations, are subject to the provisions of this regulation.”.

(3) In regulations 65(3), 69(1), both as continued in operation by regulation 10 of the Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1987 and as amended by regulation 8 of those regulations, and 71, for “Subject to regulation 72”, there shall be substituted “Except in a case to which regulation 64A(2) or (3) applies”.

(4) In regulation 66(1) at the beginning there shall be inserted “Except in a case to which regulation 64A(2) or (3) applies”.

Revocations

3. The regulations specified in column (1) of the Schedule are revoked to the extent mentioned in column (3).

Saving for pending applications

4. The amendments in regulation 2 and the revocations in regulation 3 shall not apply in the case of any review pursuant to an application for review made before 31st August 1991.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 30th August 1991.

(L.S.)

A. N. Burns

Assistant Secretary

(a) 1975 c. 14

(b) Section 154D was inserted by paragraph 5(2) of Schedule 6 to the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15))

(c) S.R. 1987 No. 466

SCHEDULE

Regulations Revoked

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Social Security (Adjudication) Regulations (Northern Ireland) 1987	S.R. 1987 No. 82	Regulation 72
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1987	S.R. 1987 No. 325	The whole regulations
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1988	S.R. 1988 No. 82	The whole regulations
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1991	S.R. 1991 No. 401	The whole regulations

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Social Security (Adjudication) Regulations (Northern Ireland) 1987 ("the principal regulations"). They correspond to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30), are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.

Regulation 2 inserts regulation 64A into the principal regulations to provide that in certain specified circumstances a decision given on review is to have effect from the date from which the decision being reviewed would have taken effect if made in the revised form. Some consequential amendments are also made.

Regulation 3 revokes regulation 72 of the principal regulations and subsequent amending regulations.

Regulation 4 provides that the changes do not affect pending applications for review.