
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 162

**SOCIAL SECURITY
FAMILY LAW
CHILD SUPPORT
PENSIONS**

**The Social Security and Child Support (Decisions
and Appeals) Regulations (Northern Ireland) 1999**

*Made - - - - 29th March 1999
Coming into operation in accordance with
regulation 1(1)*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 18(6), 22(5) and (6), 28ZA(2)(b) and (4)(c), 28ZB(6)(c), 28ZD, 43B and 47(2) of, and paragraph 8 of Schedule 4A to, the Child Support (Northern Ireland) Order 1991(1), sections 5(1)(hh), 139 and 139A of the Social Security Administration (Northern Ireland) Act 1992(2) section 165(3) of the Pension Schemes (Northern Ireland) Act 1993(3), Articles 12(1) and 13(5) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(4) and Articles 7(3), 8(6), 10(1), (4) and (6), 11(3) and (6), 12(1), 13(2), (3), (6) and (7), 15(10)(a) and (11), 16(1), 17, 18(1), 20, 21(1) to (3), 22 to 24, 25(3)(b) and (5)(c), 26(6)(c), 28(1), 31(2) and 74(1) and (3) to (6) of, and paragraphs 7, 11 and 12 of Schedule 1, paragraph 9 of Schedule 2, paragraphs 1, 4 and 9 of Schedule 3 and Schedule 4 to, the Social Security (Northern Ireland) Order 1998(5) and of all other powers enabling it in that behalf, with the concurrence of the Lord Chancellor in so far as the Regulations are made under Article 7(3) of the Social Security (Northern Ireland) Order 1998, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, that Order, hereby makes the following Regulations:

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- (1) S.I. 1991/2628 (N.I. 23); Articles 18 and 22 were substituted respectively by Articles 40 and 42 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)); Articles 28ZA and 28ZB were inserted by Article 43 of that Order; Article 28ZD was inserted by Article 44 of that Order; Article 43B was inserted by paragraph 29 of Schedule 6 to that Order; Article 47(2) was amended by paragraph 31 of Schedule 6 to that Order; Schedule 4A was inserted by Schedule 1 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and paragraph 8 of that Schedule was amended by paragraph 36(5) of Schedule 6 to the Social Security (Northern Ireland) Order 1998
 - (2) 1992 c. 8; section 5(1)(hh) was inserted by Article 70 of the Social Security (Northern Ireland) Order 1998 and section 139A was inserted by Article 26 of the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))
 - (3) 1993 c. 49; section 165 was substituted by paragraph 99 of Schedule 6 to the Social Security (Northern Ireland) Order 1998
 - (4) S.I. 1997/1183 (N.I. 12); Article 12(1) was substituted by paragraph 120(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1998
 - (5) S.I. 1998/1506 (N.I. 10)

PART I GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 and shall come into operation—

- (a) in so far as they relate to child support and for the purposes of this regulation and regulation 2, on 1st June 1999;
- (b) in so far as they relate to—
 - (i) industrial injuries benefit, guardian’s allowance and child benefit, and
 - (ii) a decision made under the Pension Schemes Act by virtue of section 165(2) of that Act,
on 5th July 1999;
- (c) in so far as they relate to retirement pension, widow’s benefit, incapacity benefit, severe disablement allowance and maternity allowance, on 6th September 1999;
- (d) in so far as they relate to family credit and disability working allowance, on 5th October 1999;
- (e) in so far as they relate to attendance allowance, disability living allowance, invalid care allowance, jobseeker’s allowance, credits of contributions or earnings and home responsibilities protection, on 18th October 1999; and
- (f) for all other purposes, on 29th November 1999.

(2) In these Regulations—

“the Order” means the Social Security (Northern Ireland) Order 1998;

“the Pension Schemes Act” means the Pension Schemes (Northern Ireland) Act 1993;

“appeal” means an appeal to an appeal tribunal;

“claimant” means—

- (a) any person who is a claimant for the purposes of section 167(1) of the Administration Act or Article 2(2) of the Jobseekers Order or any other person from whom benefit is alleged to be recoverable; and

- (b) any person subject to a decision of the Department under the Pension Schemes Act;

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(6);

“clerk to the appeal tribunal” means a clerk assigned to an appeal tribunal in accordance with regulation 37;

“the date of notification” means—

- (a) the date on which notification of a decision of the Department is treated as having been given or sent in accordance with regulation 2(b); or
- (b) in the case of a social fund payment arising in accordance with regulations made under section 134(2) of the Contributions and Benefits Act—

(6) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 Nos. 67 and 141, S.R. 1989 Nos. 40 and 398, S.R. 1991 No. 488, S.R.1992 Nos. 7, 271 and 453, S.R. 1993 Nos. 146, 149, 217 and 375, S.R. 1994 Nos. 345 and 456, S.R. 1995 No. 301, S.R. 1996 Nos. 85, 354 and 432, S.R. 1997 Nos. 155, 156, 417 and 435 and S.R. 1998 No. 182

- (i) the date seven days after the date on which the Department makes its decision to make a payment to a person to meet expenses for heating,
- (ii) where a person collects an instrument of payment at a post office, the date on which the instrument is collected,
- (iii) where an instrument of payment is sent to a post office for collection but is not collected and a replacement instrument is issued, the date on which the replacement instrument is issued, or
- (iv) where a person questions his failure to be awarded a payment for expenses for heating, the date on which the notification of the Department's decision made in response to that question is issued;

“financially qualified panel member” means a panel member who satisfies the requirements of paragraph 3 of Schedule 2;

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(7);

“the Jobseeker's Allowance Regulations” means the Jobseeker's Allowance Regulations (Northern Ireland) 1996(8);

“legally qualified panel member” means a panel member who satisfies the requirements of paragraph 1 of Schedule 2;

“medically qualified panel member” means a panel member who satisfies the requirements of paragraph 2 of Schedule 2;

“misconceived appeal” means an appeal which is—

- (a) frivolous or vexatious; or
- (b) obviously unsustainable and has no prospect of success, other than an out of jurisdiction appeal;

“official error” means an error made by an officer of the Department acting as such which no person outside the Department caused or to which no person outside the Department materially contributed;

“out of jurisdiction appeal” means an appeal brought against a decision which is specified in Schedule 2 to the Order or a decision prescribed in regulation 27;

“panel” means the panel constituted under Article 7;

“panel member” means a person appointed to the panel;

“panel member with a disability qualification” means a panel member who satisfies the requirements of paragraph 4 of Schedule 2;

“party to the proceedings” means the Department and any person—

- (a) who is one of the principal parties for the purposes of Articles 14 and 15; or
- (b) who has a right of appeal to an appeal tribunal under Article 22(1) to (3) of the Child Support Order(9) (including that Article as extended by paragraph 3 of Schedule 4C to that Order), Article 13(2) of the Recovery of Benefits Order or Article 13(2) of the Order;

“President” means the President of appeal tribunals appointed under Article 6;

(7) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 Nos. 146, 193, 274, 318, 324 and 431, S.R. 1989 Nos. 139 and 395, S.R. 1990 Nos. 131 and 297, S.R. 1991 Nos. 46 and 338, S.R. 1992 Nos. 6 and 403, S.R. 1993 Nos. 149, 218 and 373, S.R. 1994 Nos. 65, 327 and 474, S.R. 1995 Nos. 301, 350 and 434, S.R. 1996 Nos. 93, 199 and 405, S.R. 1997 Nos. 3, 165, 435 and 541, S.R. 1998 Nos. 176, 182 and 324 and S.R. 1999 No. 70

(8) S.R. 1996 No. 198; relevant amending regulations are S.R. 1996 Nos. 356, 358, 440 and 503, S.R. 1997 Nos. 165, 435 and 541 and S.R. 1998 Nos. 2, 176, 324 and 421

(9) Schedule 4C was inserted by paragraph 37 of Schedule 6 to the Social Security (Northern Ireland) Order 1998

“referral” means a referral of an application for a departure direction to an appeal tribunal under Article 28D(1)(b) of the Child Support Order(10).

(3) Any reference in these Regulations to a numbered Article is to the Article of the Order bearing that number.

(4) The Interpretation Act (Northern Ireland) 1954(11) shall apply to these Regulations as it applies to a Measure of the Assembly.

Service of notices or documents

2. Where, by any provision of the Order or of these Regulations—

- (a) any notice or other document is required to be given or sent to the clerk to the appeal tribunal or to an officer authorised by the Department, that notice or document shall be treated as having been so given or sent on the day that it is received by the clerk to the appeal tribunal or, as the case may be, by an officer authorised by the Department; and
- (b) any notice (including notification of a decision of the Department) or other document is required to be given or sent to any person other than the clerk to the appeal tribunal or, as the case may be, an officer authorised by the Department, that notice or document shall, if sent by ordinary post to that person’s last known address, be treated as having been so given or sent on the day that it is posted.

PART II

REVISIONS, SUPERSESSIONS AND OTHER NOTICES

CHAPTER I

Revisions

Revision of decisions

3.—(1) Subject to the following provisions of this regulation, any decision of the Department under Article 9 or 11 (“the original decision”) may be revised by the Department if—

- (a) it commences action leading to the revision within one month of the date of notification of the original decision; or
- (b) an application for a revision is received by it at the appropriate office—
 - (i) within one month of the date of notification of the original decision,
 - (ii) where a written statement is requested under regulation 28(1)(b), within 14 days of the expiry of the period specified in head (i), or
 - (iii) within such longer period of time as may be allowed under regulation 4.

(2) Where the Department requires further information or evidence from the applicant in order to consider all the issues raised by an application under paragraph (1)(b) (“the original application”), it shall notify the applicant that further information or evidence is required and the decision may be revised—

- (a) where the applicant provides further relevant information or evidence within one month of the date of notification or such longer period of time as the Department may allow; or

(10) Article 28D was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995

(11) 1954 c. 33 (N.I.)

- (b) where the applicant does not provide such information or evidence within the time allowed under sub-paragraph (a), on the basis of the original application.
- (3) In the case of a payment out of the social fund in respect of maternity or funeral expenses, a decision under Article 9 may be revised where the application is made—
 - (a) within one month of the date of notification; or if later
 - (b) within the time prescribed for claiming such a payment under regulation 19 of, and Schedule 4 to, the Claims and Payments Regulations(12); or
 - (c) within such longer period of time as may be allowed under regulation 4.
- (4) In the case of a decision made under the Pension Schemes Act by virtue of section 165(2) of that Act, the decision may be revised at any time by the Department where it contains an error.
- (5) Any decision of the Department under Article 9 or 11—
 - (a) which arose from an official error; or
 - (b) where the decision was made in ignorance of, or was based on a mistake as to, some material fact and as a result of that ignorance of, or mistake as to, that fact, the decision was more advantageous to the claimant than it would otherwise have been but for that ignorance or mistake,may be revised at any time by the Department.
- (6) Any decision of the Department under Article 9 or 11 that a jobseeker’s allowance is not payable to a claimant for any period in accordance with Article 21 of the Jobseekers Order(13) may be revised at any time by the Department.
- (7) A decision under Article 9 or 11 may be revised where—
 - (a) the Department awards a relevant benefit; and
 - (b) on the date from which benefit is awarded, the claimant or a member of his family is entitled to another relevant benefit or to an increase in the rate of another such benefit.
- (8) A decision of the Department which is specified in Schedule 2 to the Order or is prescribed in regulation 27 may be revised at any time.
- (9) Paragraph (1) shall not apply in respect of a relevant change of circumstances which occurred since the decision was made or where the Department has information or evidence which indicates that a relevant change of circumstances will occur.
- (10) The Department may treat an application for a supersession as an application for a revision.
- (11) In this regulation and regulation 7 “appropriate office” means—
 - (a) an office of the Department, the address of which is indicated on the notification of the original decision; or
 - (b) in the case of a person who has claimed a jobseeker’s allowance, the office specified by the Department in accordance with regulation 23 of the Jobseeker’s Allowance Regulations.

Late application for a revision

4.—(1) The time limit for making an application for a revision specified in regulation 3(1) or (3) may be extended where the conditions specified in the following provisions of this regulation are satisfied.

(12) Regulation 19 was substituted by regulation 3(7) of S.R. 1997 No. 156 and amended by S.R. 1997 No. 417 and Schedule 4 was amended by S.R. 1988 No. 141, S.R. 1991 No. 488, S.R. 1992 No. 7, S.R. 1996 Nos. 354, 432 and 456 and S.R. 1997 Nos. 155 and 156

(13) Article 21 was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))

(2) An application for an extension of time shall be made by the claimant or a person acting on his behalf.

(3) An application shall—

(a) contain particulars of the grounds on which the extension of time is sought and shall contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified; and

(b) be made within 13 months of the date of notification.

(4) An application for an extension of time shall not be granted unless the applicant satisfies the Department that—

(a) it is reasonable to grant the application;

(b) the application for revision has merit; and

(c) special circumstances are relevant to the application and as a result of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 3.

(5) In determining whether it is reasonable to grant an application, the Department shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time specified in regulation 3(1) and (3) for applying for a revision and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(6) In determining whether it is reasonable to grant an application for an extension of time, no account shall be taken of the following—

(a) that the applicant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or

(b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(7) An application under this regulation for an extension of time which has been refused may not be renewed.

(8) In this regulation “Commissioner” includes a Commissioner within the meaning of section 39(1) of the Social Security Act 1998(14).

Date from which a decision revised under Article 10 takes effect

5. Where, on a revision under Article 10, the Department decides that the date from which the decision under Article 9 or 11 (“the original decision”) took effect was erroneous, the decision under Article 10 shall take effect on the date from which the original decision would have taken effect had the error not been made.

CHAPTER II

Supersessions

Supersession of decisions

6.—(1) Subject to the following provisions of this regulation, for the purposes of Article 11, the cases and circumstances in which a decision may be superseded under that Article are set out in paragraphs (2) to (4).

(2) A decision under Article 11 may be made on the Department's own initiative or on an application made for the purpose on the basis that the decision to be superseded—

- (a) is one in respect of which—
 - (i) there has been a relevant change of circumstances since the decision was made, or
 - (ii) it is anticipated that a relevant change of circumstances will occur;
- (b) is a decision of the Department other than a decision to which sub-paragraph (d) refers and—
 - (i) the decision was erroneous in point of law, or it was made in ignorance of, or was based on a mistake as to, some material fact, and
 - (ii) an application for a supersession was received by the Department, or the decision by the Department to act on its own initiative was made, more than one month after the date of notification of the decision which is to be superseded or after the expiry of such longer period of time as may have been allowed under regulation 4;
- (c) is a decision of an appeal tribunal or of a Commissioner that was made in ignorance of, or was based on a mistake as to, some material fact;
- (d) is a decision which is specified in Schedule 2 to the Order or is prescribed in regulation 27;
- (e) is a decision where—
 - (i) the Department has awarded a relevant benefit, and
 - (ii) on a date after the date from which benefit is awarded, the claimant or a member of his family becomes entitled to another relevant benefit or to an increase in the rate of another such benefit; or
- (f) is a decision of the Department that a jobseeker's allowance is payable to a claimant where the Department subsequently determines that the allowance is not payable in accordance with Article 21 of the Jobseekers Order.

(3) A decision which may be revised under regulation 3 may not be superseded under this regulation except where—

- (a) circumstances arise in which the Department may revise that decision under regulation 3; and
- (b) further circumstances arise in relation to that decision which are not specified in regulation 3 but are specified in paragraph (2) or (4).

(4) Where the Department requires further information or evidence from the applicant in order to consider all the issues raised by an application under paragraph (2) ("the original application"), the Department shall notify the applicant that further information or evidence is required and the decision may be superseded—

- (a) where the applicant provides further relevant information or evidence within one month of the date of notification or such longer period of time as the Department may allow; or
- (b) where the applicant does not provide such information or evidence within the time allowed under sub-paragraph (a), on the basis of the original application.

(5) The Department may treat an application for a revision or a notification of a change of circumstances as an application for a supersession.

(6) The following events are not relevant changes of circumstances for the purposes of paragraph (2)—

- (a) the repayment of a loan to which regulation 66A of the Income Support Regulations(15) or regulation 136 of the Jobseeker’s Allowance Regulations applies; or
- (b) the absence from a nursing home or residential care home for a period of less than one week of a resident who is—
 - (i) in receipt of income support or a jobseeker’s allowance, and
 - (ii) not a claimant to whom Part II of Schedule 4 to the Income Support Regulations applies.

(7) In paragraph (6)(b) “nursing home” and “residential care home” have the same meanings as in regulation 19(2) of the Income Support Regulations(16) or, as the case may be, regulation 1(2) of the Jobseeker’s Allowance Regulations.

Date from which a decision superseded under Article 11 takes effect

7.—(1) This regulation contains exceptions to the provisions of Article 11(5) as to the date from which a decision under Article 11 which supersedes an earlier decision is to take effect.

(2) Where a decision under Article 11 is made on the ground that there has been, or it is anticipated that there will be, a relevant change of circumstances since the decision was made, the decision under Article 11 shall take effect—

- (a) where the decision is advantageous to the claimant and the change was notified to an appropriate office within one month of the change occurring or within such longer period as may be allowed under regulation 8 for the claimant’s failure to notify the change on an earlier date—
 - (i) subject to head (ii), from the date on which the change occurred or, where the change does not take effect until a later date, from the first day on which such effect occurs, or
 - (ii) in a case where the date on which a change of circumstances it to take effect falls to be determined in accordance with regulation 26 or 26A of the Claims and Payments Regulations(17), from the date so determined;
- (b) where the decision is advantageous to the claimant and the change was notified to an appropriate office more than one month after the change occurred or after the expiry of any such longer period as may have been allowed under regulation 8—
 - (i) in the case of a claimant who is in receipt of income support or a jobseeker’s allowance and benefit is paid in arrears, from the beginning of the benefit week in which the notification was made,
 - (ii) in the case of claimant who is in receipt of income support or a jobseeker’s allowance and benefit is paid in advance and the date of notification is the first day of a benefit week, from that date and otherwise, from the beginning of the benefit week following the week in which the notification was made, or
 - (iii) in any other case, from the date of notification of the relevant change of circumstances; or
- (c) where the decision is not advantageous to the claimant—

(15) Regulation 66A was inserted by regulation 4(7) of S.R. 1990 No. 297 and amended by S.R. 1991 Nos. 46 and 338 and S.R. 1996 No. 93

(16) The definition of “nursing home” was substituted by paragraph 6(5)(b) of Schedule 2 to S.R. 1993 No. 149; the definition of “residential care home” was inserted by paragraph 1(3)(a) of Schedule 1 to S.R. 1993 No. 149 and amended by S.R. 1993 No. 373 and S.R. 1994 No. 65

(17) Regulation 26A was inserted by regulation 2(14) of S.R. 1996 No. 354 and amended by S.R. 1998 No. 182

- (i) in a case where the date on which the change of circumstances is to take effect falls to be determined in accordance with regulation 26 or 26A of the Claims and Payments Regulations, from the date so determined, or
- (ii) in any other case, from the date of the change.

(3) For the purposes of paragraphs (2) and (8) “benefit week” has the same meaning as in regulation 2(1) of the Income Support Regulations or, as the case may be, regulation 1(2) of the Jobseeker’s Allowance Regulations.

(4) In paragraph (2), a decision which is advantageous to the claimant includes a decision specified in regulation 30(2).

(5) Where the Department supersedes a decision made by an appeal tribunal or a Commissioner on the grounds specified in regulation 6(2)(c), the decision under Article 11 shall take effect—

- (a) in a case where, as a result of that ignorance of, or mistake as to, some material fact, the decision was more advantageous to the claimant than it would otherwise have been but for that ignorance or mistake, from the date on which the decision of the appeal tribunal or the Commissioner took, or was to take, effect; or
- (b) in any other case, from the date of the decision under Article 11.

(6) A decision made under Article 11 in consequence of a decision which is a relevant determination for the purposes of Article 27 shall take effect from the date of the relevant determination.

(7) A decision to which regulation 6(2)(e) applies may be made so as to take effect from the date on which the decision which has been superseded took effect, or at any time thereafter which is reasonable in the particular circumstances of the case.

(8) A decision to which regulation 6(2)(f) applies may be made so as to take effect from—

- (a) except where sub-paragraph (b) applies, the day immediately following the end of the benefit week in which the decision under Article 11 was made; or
- (b) where, in accordance with regulation 26A(1) of the Claims and Payments Regulations, a jobseeker’s allowance is paid otherwise than fortnightly in arrears, and notwithstanding the provisions of regulation 69 of the Jobseeker’s Allowance Regulations, the day immediately following the end of the last benefit week in respect of which a jobseeker’s allowance was paid.

(9) In any case relating to attendance allowance or disability living allowance in which the decision was made under Article 11 on the grounds of a relevant change of circumstances by virtue of regulation 6(2)(a)(i) and the decision is advantageous to the claimant, the decision shall take effect from whichever is the later of—

- (a) the date declared by the Department to be the date on which the change of circumstances occurred;
- (b) where more than one change has occurred between the date of the decision to be superseded (“the original decision”) and the date of the application or, as the case may be, the date on which the Department determines on its own initiative to supersede the original decision, the date declared by the Department to be the date on which the most recent change took effect; or
- (c) where the claimant notifies the change within one month of the date on which he first satisfies the conditions in, for the period of time specified in, section 65(1)(b) of the Contributions and Benefits Act or, as the case may be, section 72(2)(a) or 73(9)(a) of that Act, following the change or most recent change of circumstances which gave rise to the decision under Article 11, the first pay day (as specified in Schedule 6 to the Claims and Payments Regulations) after the requirement is first satisfied.

(10) A decision as to an award of incapacity benefit, which is made under Article 11 because section 30B(4) of the Contributions and Benefits Act(18) applies to the claimant, shall take effect from the date on which he became entitled to the highest rate of the care component of disability living allowance.

(11) A decision as to an award of incapacity benefit or severe disablement allowance, which is made under Article 11 because the claimant is to be treated as incapable of work under regulation 10 of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(19), shall take effect from the date on which he is to be treated as incapable of work.

(12) Where this paragraph applies, a decision under Article 11 may be made so as to take effect from such date, not more than eight weeks before—

- (a) the application for supersession; or
- (b) where no application is made, the date on which the decision under Article 11 is made,

as is reasonable in the particular circumstances of the case.

(13) Paragraph (12) applies where—

- (a) the effect of a decision under Article 11 is that there is to be included in a claimant's applicable amount an amount in respect of a loan which qualifies under—
 - (i) paragraph 15 or 16 of Schedule 3 to the Income Support Regulations(20), or
 - (ii) paragraph 14 or 15 of Schedule 2 to the Jobseeker's Allowance Regulations; and
- (b) that decision could not have been made earlier because information necessary to make that decision, requested otherwise than in accordance with paragraph 9(3)(b) of Schedule 8B to the Claims and Payments Regulations(21), had not been supplied to the Department by the lender.

(14) Subject to paragraph (23), where a claimant is in receipt of income support and his applicable amount includes an amount determined in accordance with Schedule 3 to the Income Support Regulations, and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 15 or 16 of that Schedule, a decision made under Article 11 shall take effect—

- (a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or
- (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.

(15) Where a claimant is in receipt of income support and payments made to that claimant which fall within paragraph 29 or 30(1)(a) to (c) of Schedule 9 to the Income Support Regulations(22) have been disregarded in relation to any decision under Article 9 or 11 and there is a change in the amount of interest payable—

- (a) on a loan qualifying under paragraph 15 or 16 of Schedule 3 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

(18) Section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by paragraphs 14(b) and 18(3) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(19) S.R. 1995 No. 41; relevant amending regulations are S.R. 1995 No. 149, S.R. 1996 No. 601 and S.R. 1997 No. 174

(20) Schedule 3 was substituted by Schedule 1 to S.R. 1995 No. 301

(21) Schedule 8B was inserted by regulation 5 of S.R. 1992 No. 271

(22) Paragraphs 29 and 30 were substituted by paragraph 1 of Schedule 3 to S.R. 1995 No. 301

a decision under Article 11 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (16) is appropriate in the claimant's case.

(16) The date on which a decision under Article 11 takes effect for the purposes of paragraph (15) is—

- (a) the date on which the claimant's housing costs are first met under paragraph 6(1)(a), 8(1)(a) or 9(2)(a) of Schedule 3 to the Income Support Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

(17) In paragraph (16), "standard rate" has the same meaning as in paragraph 1(2) of Schedule 3 to the Income Support Regulations.

(18) Subject to paragraph (24) and, except in a case to which paragraph (23) applies, where a claimant is in receipt of a jobseeker's allowance and his applicable amount includes an amount determined in accordance with Schedule 2 to the Jobseeker's Allowance Regulations, and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 14 or 15 of that Schedule, a decision under Article 11 made as a result of that reduction shall take effect—

- (a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or
- (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.

(19) Where a claimant is in receipt of a jobseeker's allowance and payments made to that claimant which fall within paragraph 30 or 31(1)(a) to (c) of Schedule 6 to the Jobseeker's Allowance Regulations have been disregarded in relation to any decision under Article 9 or 11 and there is a change in the amount of interest payable—

- (a) on a loan qualifying under paragraph 14 or 15 of Schedule 2 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

a decision under Article 11 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (20) is appropriate in the claimant's case.

(20) The date on which a decision under Article 11 takes effect for the purposes of paragraph (19) is—

- (a) the date on which the claimant's housing costs are first met under paragraph 6(1)(a), 7(1)(a) or 8(2)(a) of Schedule 2 to the Jobseeker's Allowance Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

(21) In paragraph (20), "standard rate" has the same meaning as in paragraph 1(2) of Schedule 2 to the Jobseeker's Allowance Regulations.

(22) Where—

- (a) a claimant was paid benefit in respect of 6th October 1996 in accordance with an award of income support;

- (b) that claimant's applicable amount includes an amount determined in accordance with Schedule 3 to the Income Support Regulations;
- (c) the claimant is treated as having been awarded a jobseeker's allowance by virtue of regulation 7 of the Jobseeker's Allowance (Transitional Provisions) (No. 2) Regulations (Northern Ireland) 1996(23); and
- (d) a decision is made under Article 11 in consequence of a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 15 or 16 of Schedule 3 to the Income Support Regulations,

the decision under Article 11 referred to in sub-paragraph (d) shall take effect on the next anniversary of the date on which housing costs were first met which occurs after the reduction.

(23) Where, in any case to which paragraph (14) or (18) applies, a claimant has been continuously in receipt of, or treated as having been continuously in receipt of, income support or a jobseeker's allowance, or one of those benefits followed by the other, and he or his partner continues to receive either benefit, the anniversary to which those paragraphs refer shall be the anniversary of the earliest date on which benefit (whether income support or a jobseeker's allowance) in respect of those mortgage interest costs became payable.

(24) Where—

- (a) it has been determined that the amount of a jobseeker's allowance payable to a young person is to be reduced under regulation 63 of the Jobseeker's Allowance Regulations because paragraph (1)(b)(iii), (c), (d), (e) or (f) of that regulation applied in his case; and
- (b) the decision made in consequence of sub-paragraph (a) falls to be superseded by a decision under Article 11 because the Department has subsequently issued a certificate under Article 19(4) of the Jobseekers Order with respect to the failure in question,

the decision under Article 11 shall take effect from the same date as the decision made in consequence of sub-paragraph (a) has effect.

Effective date for late notifications of change of circumstances

8.—(1) For the purposes of regulation 7(2), a longer period of time may be allowed for the notification of a change of circumstances in so far as it affects the effective date of the change where the conditions specified in the following provisions of this regulation are satisfied.

(2) An application for the purposes of regulation 7(2) shall be made by the claimant or a person acting on his behalf.

(3) The application referred to in paragraph (2) shall—

- (a) contain particulars of the relevant change of circumstances and the reasons for the failure to notify the change of circumstances on an earlier date; and
- (b) be made within 13 months of the date the change occurred.

(4) An application under this regulation shall not be granted unless the Department is satisfied that—

- (a) it is reasonable to grant the application;
- (b) the change of circumstances notified by the applicant is relevant to the decision which is to be superseded; and
- (c) special circumstances are relevant to the application and as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances within one month of the change occurring.

(5) In determining whether it is reasonable to grant an application, the Department shall have regard to the principle that the greater the amount of time that has elapsed between the date one month after the change of circumstances occurred and the date on which the application for the purposes of regulation 7(2) is made, the more compelling should be the special circumstances on which the application is based.

(6) In determining whether it is reasonable to grant an application, no account shall be taken of the following—

- (a) that the applicant or any person acting for him was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(7) An application under this regulation which has been refused may not be renewed.

(8) In this regulation “Commissioner” includes a Commissioner within the meaning of section 39(1) of the Social Security Act 1998.

CHAPTER III

Other matters

Certificates of recoverable benefits

9. A certificate of recoverable benefits may be reviewed under Article 12 of the Recovery of Benefits Order(24) where the Department is satisfied that—

- (a) a mistake (whether in computation of the amount specified or otherwise) occurred in the preparation of the certificate;
- (b) the benefit recovered from a person who makes a compensation payment (as defined in Article 3 of the Recovery of Benefits Order) is in excess of the amount due to the Department;
- (c) incorrect or insufficient information was supplied to the Department by the person who applied for the certificate and in consequence the amount of benefit specified in the certificate was less than it would have been had the information supplied been correct and sufficient; or
- (d) a ground for appeal is satisfied under Article 13 of the Recovery of Benefits Order.

Effect of a determination as to capacity for work

10. A determination (including a determination made following a change of circumstances) whether a person is, or is to be treated as, capable or incapable of work which is embodied in or necessary to a decision under Chapter II of Part II of the Order or on which such a decision is based shall be conclusive for the purposes of any further such decision.

Department to determine certain matters

11. Where, in relation to a determination for any purpose to which Part XIIA of the Contributions and Benefits Act(25) applies, an issue arises as to—

(24) Article 12(1) was substituted by paragraph 120(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(25) Part XIIA was inserted by Articles 7 and 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

- (a) whether a person is, or is to be treated as, capable or incapable of work in respect of any period; or
- (b) whether a person is terminally ill,

that issue shall be determined by the Department, notwithstanding that other matters fall to be determined by another authority.

Decisions of the Department relating to industrial injuries benefit

12.—(1) This regulation applies where, for the purpose of a decision of the Department relating to a claim for industrial injuries benefit under Part V of the Contributions and Benefits Act an issue to be decided is—

- (a) the extent of a personal injury for the purposes of section 94 of that Act;
- (b) whether the claimant has a disablement for the purposes of section 103 of that Act or the extent of any such disablement; or
- (c) whether the claimant has a disease prescribed for the purposes of section 108 of that Act or the extent of any disablement resulting from such a disease.

(2) In connection with making a decision to which this regulation applies, the Department may refer an issue, together with any relevant information or evidence available to it, including any information or evidence provided by or on behalf of the claimant, to a medical practitioner who has experience in such of the issues specified in paragraph (1) as are relevant to the decision, for such report as appears to the Department to be necessary for the purpose of providing it with information for use in making the decision.

(3) In making a decision to which this regulation applies, the Department shall have regard to (among other factors)—

- (a) all relevant medical reports provided to it in connection with that decision; and
- (b) the experience, in such of the issues specified in paragraph (1) as are relevant to the decision, of any medical practitioner who has provided a report, including a medical practitioner who has provided a report following an examination required by the Department under Article 19.

Income support and social fund determinations on incomplete evidence

13.—(1) Where, for the purpose of a decision under Article 9 or 11—

- (a) a determination falls to be made by the Department as to what housing costs are to be included in a claimant's applicable amount by virtue of regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, the Income Support Regulations; and
- (b) it appears to the Department that it is not in possession of all of the information or evidence which is relevant for the purposes of such a determination,

it shall make the determination on the assumption that the housing costs to be included in the claimant's applicable amount are those that can be immediately determined.

(2) Where, for the purpose of a decision under Article 9 or 11—

- (a) a determination falls to be made by the Department as to whether—
 - (i) in relation to any person, the applicable amount falls to be reduced or disregarded to any extent by virtue of section 125(3) of the Contributions and Benefits Act,
 - (ii) for the purposes of regulation 12 of the Income Support Regulations⁽²⁶⁾, a person is by virtue of that regulation to be treated as receiving relevant education, or

(26) Regulation 12 was substituted by regulation 5 of S.R. 1990 No. 131 and amended by S.R. 1992 No. 403 and S.R. 1993 No. 373

- (iii) in relation to any claimant, the applicable amount includes severe disability premium by virtue of regulation 17(1)(d) or 18(1)(e) of, and paragraph 13 of Schedule 2 to, the Income Support Regulations; and
 - (b) it appears to the Department that it is not in possession of all of the information or evidence which is relevant for the purposes of such a determination,
- it shall make the determination on the assumption that the relevant information or evidence which is not in its possession is adverse to the claimant.

Effect of alteration in the component rates of income support and jobseeker's allowance

14.—(1) Section 139 of the Administration Act shall not apply to any award of income support in force in favour of a person where there is applicable to that person—

- (a) any amount determined in accordance with regulation 17(2) to (7) of the Income Support Regulations⁽²⁷⁾;
- (b) any protected sum determined in accordance with Schedule 3A or 3B to those Regulations⁽²⁸⁾; or
- (c) any transitional addition, personal expenses addition or special transitional addition applicable under Part II of the Income Support (Transitional) Regulations (Northern Ireland) 1987⁽²⁹⁾.

(2) Where section 139 of the Administration Act does not apply to an award of income support by virtue of paragraph (1), a decision under Article 11 may be made in respect of that award for the sole purpose of giving effect to any change made by an order under section 132 of the Administration Act⁽³⁰⁾.

(3) Section 139A of the Administration Act⁽³¹⁾ shall not apply to any award of a jobseeker's allowance in force in favour of a person where there is applicable to that person any amount determined in accordance with regulation 87 of the Jobseeker's Allowance Regulations.

(4) Where section 139A of the Administration Act does not apply to an award of a jobseeker's allowance by virtue of paragraph (3), a decision under Article 11 may be made in respect of that award for the sole purpose of giving effect to any change made by an order under section 132 of the Administration Act.

Jobseeker's allowance determinations on incomplete evidence

15. Where, for the purpose of a decision under Article 9 or 11—

- (a) a determination falls to be made by the Department as to whether—
 - (i) in relation to any person, the applicable amount falls to be reduced or disregarded to any extent by virtue of Article 17 of the Jobseekers Order, or
 - (ii) for the purposes of regulation 54 of the Jobseeker's Allowance Regulations⁽³²⁾, a person is by virtue of that regulation to be treated as receiving relevant education; and
- (b) it appears to the Department that it is not in possession of all of the information or evidence which is relevant for the purposes of such a determination,

⁽²⁷⁾ Paragraphs (2) to (7) were added by regulation 2 of S.R. 1988 No. 193 and amended by S.R. 1989 No. 395 and S.R. 1993 No. 149

⁽²⁸⁾ Schedules 3A and 3B were inserted by Schedule 2 to S.R. 1988 No. 318 and Schedule 1 to S.R. 1989 No. 139 respectively

⁽²⁹⁾ S.R. 1987 No. 460; relevant amending regulations are S.R. 1988 No. 132

⁽³⁰⁾ Section 132 was amended by paragraph 41 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 (c. 49)

⁽³¹⁾ Section 139A was inserted by Article 26 of the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

⁽³²⁾ Regulation 54 was amended by regulation 5 of S.R. 1997 No. 541

it shall make the determination on the assumption that the relevant information or evidence which is not in its possession is adverse to the claimant.

PART III

SUSPENSION, TERMINATION AND OTHER MATTERS

CHAPTER I

Suspension and termination

Suspension in prescribed cases

16.—(1) Subject to paragraph (2), the Department may suspend payment of a relevant benefit, in whole or in part, in the circumstances prescribed in paragraph (3).

(2) The Department shall suspend payment of a jobseeker's allowance in the circumstances prescribed in paragraph (3)(a)(i) or (ii) where the issue or one of the issues is whether a person, who has claimed a jobseeker's allowance, is or was available for employment or whether he is or was actively seeking employment.

(3) The prescribed circumstances are that—

(a) it appears to the Department that—

- (i) an issue arises whether the conditions for entitlement to a relevant benefit are or were fulfilled,
- (ii) an issue arises whether a decision as to an award of a relevant benefit should be revised under Article 10 or superseded under Article 11,
- (iii) an issue arises whether any amount paid or payable to a person by way of, or in connection with a claim for, a relevant benefit is recoverable under section 69, 69A or 72 of the Administration Act⁽³³⁾ or regulations made under any of those sections, or
- (iv) the last address notified to it of a person who is in receipt of a relevant benefit is not the address at which that person is residing; or

(b) an appeal is pending against—

- (i) a decision of an appeal tribunal, a Commissioner or a court, or
- (ii) a decision given in a different case by a Commissioner or a court, and it appears to the Department that, if the appeal were to be determined in a particular way, an issue would arise as to whether the award of a relevant benefit (whether the same benefit or not) in the case itself ought to be revised or superseded.

(4) For the purposes of Article 21(3)(c) an appeal is pending where the Department certifies in writing that it proposes—

- (a) to make a request under regulation 53(4) for a statement of reasons for a decision of an appeal tribunal;
- (b) to bring an appeal against the decision; or
- (c) to bring an appeal against a decision in a different case and, if that appeal were to be allowed, an issue would arise as to whether the award of a relevant benefit (whether the same benefit or not) in the case itself ought to be revised or superseded.

⁽³³⁾ Section 69 was amended by Article 33(1) of, and paragraph 31 of Schedule 2 to, the Jobseekers (Northern Ireland) Order 1995 and section 2(2) to (4) of the Social Security (Overpayments) Act 1996 (c. 51); section 69A was inserted by Article 20 of the Jobseekers (Northern Ireland) Order 1995; section 72 was amended by paragraph 33 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995

(5) In this regulation “Commissioner” includes a Commissioner within the meaning of section 39(1) of the Social Security Act 1998.

Provision of information or evidence

17.—(1) This regulation applies where the Department requires information or evidence for a determination whether a decision awarding a relevant benefit should be—

- (a) revised under Article 10; or
- (b) superseded under Article 11.

(2) For the purposes of paragraph (1), the following persons shall satisfy the requirements of paragraph (4)—

- (a) a person in respect of whom payment of a benefit has been suspended in the circumstances prescribed in regulation 16(3)(a);
- (b) a person who has made an application for a decision of the Department to be revised or superseded;
- (c) a person who fails to comply with the provisions of regulation 32(1) of the Claims and Payments Regulations in so far as they relate to documents, information or facts required by the Department;
- (d) a person who qualifies for income support by virtue of paragraph 7 of Schedule 1B to the Income Support Regulations⁽³⁴⁾;
- (e) a person whose entitlement to benefit is conditional on his being, or being treated as, incapable of work.

(3) The Department shall notify any person to whom paragraph (2) refers of the requirements of this regulation.

(4) A person to whom paragraph (2) refers shall either—

- (a) supply the information or evidence within—
 - (i) a period of one month beginning with the date on which the notification under paragraph (3) was sent to him, or
 - (ii) such longer period as he satisfies the Department is necessary in order to enable him to comply with the requirements; or
- (b) satisfy the Department within the period of time specified in sub-paragraph (a)(i) that either—
 - (i) the information or evidence required of him does not exist, or
 - (ii) that it is not possible for him to obtain it.

(5) The Department may suspend payment of a relevant benefit, in whole or in part, to any person to whom paragraph (2)(b) to (e) applies who fails to satisfy the requirements of paragraph (4).

(6) In this regulation “evidence” includes evidence which a person is required to provide in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976⁽³⁵⁾.

Termination in cases of failure to furnish information or evidence

18.—(1) Subject to paragraphs (2) to (4), the Department shall decide that where a person—

⁽³⁴⁾ Schedule 1B was inserted by Schedule 1 to S.R. 1996 No. 199

⁽³⁵⁾ S.R. 1976 No. 175; relevant amending regulations are S.R. 1982 No. 153, S.R. 1987 No. 117, S.R. 1992 No. 83, S.R. 1994 No. 468 and S.R. 1995 No. 149

- (a) whose benefit has been suspended in accordance with regulation 16 and who subsequently fails to comply with an information requirement made in pursuance of regulation 17; or
- (b) whose benefit has been suspended in accordance with regulation 17(5),

that person shall cease to be entitled to that benefit from the date on which payment was suspended except where entitlement to benefit ceases on an earlier date other than under this regulation.

(2) Paragraph (1)(a) shall not apply where not more than one month has elapsed since the information requirement was made in pursuance of regulation 17.

(3) Paragraph (1)(b) shall not apply where not more than one month has elapsed since the first payment was suspended in accordance with regulation 17.

(4) Paragraph (1) shall not apply where benefit has been suspended in part under regulation 16 or, as the case may be, regulation 17.

Suspension and termination for failure to submit to medical examination

19.—(1) Except where regulation 8 of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 applies, the Department may require a person to submit to a medical examination by a medical practitioner where that person is in receipt of a relevant benefit, and either—

- (a) the Department considers it necessary to satisfy itself as to the correctness of the award of the benefit, or of the rate at which it was awarded; or
- (b) that person applies for a revision or supersession of the award and the Department considers that the examination is necessary for the purpose of making its decision.

(2) The Department may suspend payment of a relevant benefit, in whole or in part, to a person who fails, without good cause, on two consecutive occasions to submit to a medical examination in accordance with requirements under paragraph (1) except where entitlement to benefit is suspended on an earlier date other than under this regulation.

(3) Subject to paragraph (4), the Department may determine that entitlement to a relevant benefit of a person, in respect of whom payment of such a benefit has been suspended under paragraph (2), shall cease from a date not earlier than the date on which payment was suspended except where entitlement to benefit ceases on an earlier date other than under this regulation.

(4) Paragraph (3) shall not apply where not more than one month has elapsed since the first payment was suspended under paragraph (2).

Making of payments which have been suspended

20.—(1) Subject to paragraphs (2) and (3), payment of a benefit suspended in accordance with regulation 16 shall be made where—

- (a) in a case to which regulation 16(2) or (3)(a)(i) to (iii) applies, the Department is satisfied that the benefit suspended is properly payable and no outstanding issues remain to be resolved;
- (b) in a case to which regulation 16(3)(a)(iv) applies, the Department is satisfied that it has been notified of the address at which the person is residing; or
- (c) in a case to which regulation 16(3)(b) applies, an appeal is no longer pending and the benefit suspended remains payable following the determination of the appeal.

(2) Where regulation 16(4)(a) applies, payment of a benefit suspended shall be made if, within one month of the date on which the Department received a copy of the tribunal's decision, it has not notified the claimant in writing that it has requested, pursuant to regulation 53(4), a statement of the reasons for the decision.

(3) Where regulation 16(4)(b) or (c) applies, payment of a benefit suspended shall be made if the Department fails to notify the claimant in writing, within one month of the date on which it receives the reasons in writing for the decision on appeal which was pending for the purposes of regulation 16(3)(b), that an appeal against the decision has been brought (or, as the case may be, an application for leave to appeal against the decision has been made).

(4) Payment of benefit which has been suspended in accordance with regulation 19 for failure to submit to a medical examination shall be made where the Department is satisfied that it is no longer necessary for the person referred to in that regulation to submit to a medical examination.

CHAPTER II

Other matters

Decisions involving issues that arise on appeal in other cases

21.—(1) For the purposes of Article 25(3)(b), a case which satisfies the condition in paragraph (2) is a prescribed case.

(2) The condition is that the claimant would be entitled to the benefit to which the decision which falls to be made relates, even if the appeal in the other case referred to in Article 25(1)(b) were decided in a way which is the most unfavourable to him.

(3) For the purposes of Article 25(3)(b), the prescribed basis on which the Department may make the decision is as if—

- (a) the appeal in the other case referred to in Article 25(1)(b) had already been determined; and
- (b) that appeal had been decided in a way which is the most unfavourable to the claimant.

(4) The circumstances prescribed under Article 25(5)(c), where an appeal is pending against a decision for the purposes of that Article, even though an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired, are where the Department—

- (a) certifies in writing that it is considering appealing against that decision; and
- (b) considers that, if such an appeal were to be determined in a particular way—
 - (i) there would be no entitlement to benefit in a case to which Article 25(1)(a) refers, or
 - (ii) the appeal would affect the decision in that case in some other way.

Appeals involving issues that arise in other cases

22. The circumstances prescribed under Article 26(6)(c), where an appeal is pending against a decision in the case described in Article 26(1)(b), even though an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired, are where the Department—

- (a) certifies in writing that it is considering appealing against that decision; and
- (b) considers that, if such an appeal were already determined, it would affect the determination of the appeal described in Article 26(1)(a).

Child support decisions involving issues that arise on appeal in other cases

23.—(1) For the purposes of Article 28ZA(2)(b) of the Child Support Order(36), a case which satisfies either of the conditions in paragraph (2) is a prescribed case.

(2) The conditions are that—

(36) Article 28ZA(2)(b) was inserted by Article 43 of the Social Security (Northern Ireland) Order 1998

- (a) if a decision were not made on the basis prescribed in paragraph (3), the parent with care would become entitled to income support if a claim were made, or to an increased amount of that benefit; or
 - (b) the absent parent is an employed earner or a self-employed earner.
- (3) For the purposes of Article 28ZA(2)(b) of the Child Support Order, the prescribed basis on which the Department may make the decision is as if—
- (a) the appeal in relation to the different maintenance assessment, which is referred to in Article 28ZA(1)(b) of that Order had already been determined; and
 - (b) that appeal had been decided in a way that was the most unfavourable to the applicant for the decision mentioned in Article 28ZA(1)(a) of that Order.
- (4) The circumstances prescribed under Article 28ZA(4)(c) of the Child Support Order(37), where an appeal is pending against a decision for the purposes of that Article, even though an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired, are where the Department—
- (a) certifies in writing that it is considering appealing against that decision; and
 - (b) considers that, if such an appeal were to be determined in a particular way—
 - (i) there would be no liability for child support maintenance, or
 - (ii) such liability would be less than would be the case were an appeal not made.
- (5) In this regulation—
- “absent parent” and “parent with care” have the same meanings as in Article 2(2) of the Child Support Order(38);
- “employed earner” and “self-employed earner” have the same meanings as in section 2(1) of the Contributions and Benefits Act.

Child support appeals involving issues that arise in other cases

24. The circumstances prescribed under Article 28ZB(6)(c) of the Child Support Order(39), where an appeal is pending against a decision in the case described in Article 28ZB(1)(b) of that Order, even though an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired, are where the Department—

- (a) certifies in writing that it is considering appealing against that decision; and
- (b) considers that, if such an appeal were already determined, it would affect the determination of the appeal described in Article 28ZB(1)(a) of that Order.

PART IV

RIGHTS OF APPEAL AND PROCEDURE FOR BRINGING APPEALS

CHAPTER I

(37) Article 28ZA(4)(c) was inserted by Article 43 of the Social Security (Northern Ireland) Order 1998

(38) The definition of “parent with care” was inserted by paragraph 2(a) of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))

(39) Article 28ZB(6)(c) was inserted by Article 43 of the Social Security (Northern Ireland) Order 1998

General appeals matters not including child support appeals

Other persons with a right of appeal

25. For the purposes of Article 13(2)(b), the following other persons have a right to appeal to an appeal tribunal—

- (a) any person appointed by the Department under regulation 33(1) of the Claims and Payments Regulations to act on behalf of another;
- (b) any person claiming attendance allowance or disability living allowance on behalf of another under section 66(2)(b) of the Contributions and Benefits Act or, as the case may be, section 76(3) of that Act; and
- (c) in relation to a pension scheme, any person who, for the purposes of Part X of the Pension Schemes Act, is an employer, member, trustee or manager by virtue of section 142(8) of that Act.

Decisions against which an appeal lies

26. An appeal shall lie to an appeal tribunal against a decision made by the Department—

- (a) as to whether a person is entitled to a relevant benefit for which no claim is required by virtue of regulation 3 of the Claims and Payments Regulations; or
- (b) as to whether a payment be made out of the social fund to a person to meet expenses for heating by virtue of regulations made under section 134(2) of the Contributions and Benefits Act.

Decisions against which no appeal lies

27.—(1) No appeal lies to an appeal tribunal against a decision set out in Schedule 1.

(2) In paragraph (1) and Schedule 1, “decision” includes determinations embodied in or necessary to a decision.

(3) An appeal brought against a decision specified in paragraph (1) may be struck out in accordance with regulation 46.

Notice of decision against which appeal lies

28.—(1) A person with a right of appeal under the Order or these Regulations against any decision of the Department shall—

- (a) be given written notice of the decision against which the appeal lies;
- (b) be informed that, in a case where that written notice does not include a statement of the reasons for that decision, he may, within one month of the date of notification of that decision, request that the Department provide him with a written statement of the reasons for that decision; and
- (c) be given written notice of his right of appeal against that decision.

(2) Where a written statement of the reasons for the decision is not included in the written notice of the decision and is requested under paragraph (1)(b), the Department shall provide that statement within 14 days of receipt of the request.

Further particulars required relating to certificate of recoverable benefits appeals or applications

29.—(1) An appeal or application under the Recovery of Benefits Order relating to a certificate of recoverable benefits shall, in addition to any requirements specified in regulation 33, include the following particulars—

- (a) in the case of an appeal, the date of the certificate of recoverable benefits or the decision by the Department on review against which the appeal is brought, the question under Article 13 of the Recovery of Benefits Order to which the appeal relates and a summary of the arguments relied on by the appellant to support his contention that the certificate is wrong; and
- (b) in the case of an application for an extension of time under regulation 32, in relation to the appeal which it is proposed to bring, the particulars required under sub-paragraph (a) together with particulars of the special circumstances on which the application is based.

(2) Where the appeal or the application for an extension of time is made by a person to whom a compensation payment has been made, a copy of the statement given to that person under Article 11 of the Recovery of Benefits Order or if that statement was not in writing, a written summary of it, shall be sent with the appeal or application.

(3) Where it appears to the Department that an appeal or application does not contain the further particulars required under paragraph (1) or is not accompanied by a written statement or summary as required under paragraph (2), it may direct the appellant or applicant to provide such particulars or such a statement or summary.

(4) Where paragraph (3) applies, the time specified for making the appeal or application may be extended by such period, not exceeding 14 days from the date of the Department's direction under paragraph (3), as the Department may determine.

(5) Where further particulars or a written statement or summary are required under paragraph (3), they shall be sent or delivered to the Department within such period as it may direct.

(6) The Department may treat any appeal relating to the certificate of recoverable benefits as an application for review under Article 12 of the Recovery of Benefits Order⁽⁴⁰⁾.

CHAPTER II

General appeals matters including child support appeals

Appeals against decisions which have been revised

30.—(1) An appeal against a decision of the Department shall not lapse where the decision is revised under Article 18 of the Child Support Order⁽⁴¹⁾ or under Article 10 before the appeal is determined and the decision as revised is not more advantageous to the appellant than the decision before it was revised.

(2) Decisions which are more advantageous for the purposes of this regulation include decisions where—

- (a) any relevant benefit paid to the appellant is greater or is awarded for a longer period in consequence of the decision made under Article 10;
- (b) it would have resulted in the amount of relevant benefit in payment being greater but for the operation of any provision of the Administration Act or the Contributions and Benefits

⁽⁴⁰⁾ Article 12(1) was substituted by paragraph 120(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

⁽⁴¹⁾ Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998

Act restricting or suspending the payment of, or disqualifying a claimant for receiving, some or all of the benefit;

- (c) as a result of the decision, a denial or disqualification for receiving any relevant benefit is lifted, wholly or in part;
- (d) it reverses a decision to pay benefit to a third party;
- (e) in consequence of the revised decision, benefit paid is not recoverable under section 69, 69A or 72 of the Administration Act or regulations made under any of those sections, or the amount so recoverable is reduced; or
- (f) a financial gain accrued or will accrue to the appellant in consequence of the decision.

(3) Where a decision as revised under Article 18 of the Child Support Order or under Article 10 is not more advantageous to the appellant than the decision before it was revised, the appeal shall be treated as if it had been brought against the decision as revised.

(4) The appellant shall have a period of one month from the date of notification of the decision as revised to make further representations as to the appeal.

(5) After the expiry of the period specified in paragraph (4), or within that period if the appellant consents in writing, the appeal to the appeal tribunal shall proceed except where, in the light of any further representations from the appellant, the Department further revises its decision and that decision is more advantageous to the appellant than the decision before it was revised.

Time within which appeals are to be brought

31.—(1) Where an appeal lies from a decision of the Department to an appeal tribunal, the time within which that appeal shall be brought is, subject to the following provisions of this Part—

- (a) one month of the date of notification of the decision against which the appeal is brought; or
- (b) where a written statement of reasons for that decision is requested, 14 days of the expiry of the period specified in sub-paragraph (a).

(2) Where the Department—

- (a) revises, or following an application for a revision under regulation 3(1) or (3) does not revise, a decision under Article 18 of the Child Support Order or under Article 10; or
- (b) supersedes a decision under Article 19 of that Order⁽⁴²⁾ or under Article 11,

the period of one month specified in paragraph (1) shall run from the date of notification of the revision or supersession of the decision or, following an application for a revision under regulation 3(1) or (3), the date on which the Department issues a notice that it is not revising the decision.

(3) An appeal against a certificate of recoverable benefits shall be brought—

- (a) not later than one month after the date on which a person making a compensation payment discharges his liability under Article 8 of the Recovery of Benefits Order;
- (b) where the certificate is reviewed by the Department in accordance with regulations made under Article 13(5)(c) of that Order, not later than one month after the date on which the certificate is confirmed or, as the case may be, a fresh certificate is issued; or
- (c) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of a claim made by or in respect of an injured person and arising out of the accident, injury or disease, not later than one month after the date of that agreement.

⁽⁴²⁾ Article 19(3) and (5) was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998

(4) Where a dispute arises as to whether an appeal was brought within the time limit specified in this regulation, the dispute shall be referred to, and be determined by, a legally qualified panel member.

(5) The time limit specified in this regulation for bringing an appeal may be extended in accordance with regulation 32.

Late appeals

32.—(1) The time for bringing an appeal may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but no appeal shall in any event be brought more than one year after the expiry of the last day for appealing under regulation 31.

(2) An application for an extension of time under this regulation shall be made in accordance with regulation 33 and shall be determined by a legally qualified panel member.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (4).

(4) An application for an extension of time shall not be granted unless the legally qualified panel member is satisfied that—

- (a) if the application is granted there are reasonable prospects that the appeal will be successful; and
- (b) it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4), it is not in the interests of justice to grant an application unless the legally qualified panel member is satisfied that—

- (a) the special circumstances specified in paragraph (6) are relevant to the application; or
- (b) some other special circumstances exist which are wholly exceptional and relevant to the application,

and as a result of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 31.

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a spouse or dependant of the applicant has died or suffered serious illness;
- (b) the applicant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant an application, the legally qualified panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time within which the appeal is to be brought under regulation 31 and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(8) In determining whether it is in the interests of justice to grant an application, no account shall be taken of the following—

- (a) that the applicant or any person acting for him was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(9) An application under this regulation for an extension of time which has been refused may not be renewed.

(10) The legally qualified panel member who determines an application under this regulation shall record a summary of his decision in such written form as has been approved by the President.

(11) As soon as practicable after the decision is made a copy of the decision shall be sent or given to every party to the proceedings.

(12) In this regulation “Commissioner” includes—

- (a) a Commissioner within the meaning of section 39(1) of the Social Security Act 1998⁽⁴³⁾; and
- (b) a Child Support Commissioner appointed under section 22 or 23 of the Child Support Act 1991⁽⁴⁴⁾.

Making of appeals and applications

33.—(1) An appeal, or an application for an extension of time for making an appeal to an appeal tribunal, shall be in writing either on a form approved for the purpose by the Department or in such other format as it accepts as sufficient for the purpose and shall—

- (a) be signed by—
 - (i) the person who has a right of appeal to an appeal tribunal under Article 22(1) to (3) of the Child Support Order (including that Article as extended by paragraph 3 of Schedule 4C to that Order), Article 13(2) of the Recovery of Benefits Order or Article 13(2) of the Order, or
 - (ii) where the person mentioned in head (i) has provided written authority to a representative to act on his behalf, by that representative;
- (b) be sent or delivered to an office of the Department;
- (c) contain particulars of the grounds on which it is made; and
- (d) contain sufficient particulars of the decision, the certificate of recoverable benefits or, as the case may be, the subject of the application to enable that decision, certificate or subject of the application to be identified.

(2) A form which is not completed in accordance with the instructions on it—

- (a) except where paragraph (3) applies, does not satisfy the requirements of paragraph (1); and
- (b) may be returned by the Department to the sender for completion in accordance with those instructions.

(3) Where the Department is satisfied that the form, although not completed in accordance with the instructions on it, includes sufficient information to enable the appeal or application to proceed, it may treat the form as satisfying the requirements of paragraph (1).

(4) Where an appeal or application is made in writing otherwise than on the approved form (“the letter”), and the letter includes sufficient information to enable the appeal or application to proceed, the Department may treat the letter as satisfying the requirements of paragraph (1).

(5) Where the letter does not include sufficient information to enable the appeal or application to proceed, the Department may request further information in writing (“further particulars”) from the person who wrote the letter.

(6) Where a person to whom a form is returned or from whom further particulars are requested duly completes and returns the form or sends the further particulars and the form or, as the case may be, further particulars are received by the Department within—

- (a) 14 days of the date on which the form was returned to him by the Department;

⁽⁴³⁾ 1998 c. 14

⁽⁴⁴⁾ 1991 c. 48

- (b) 14 days of the date on which the Department's request was made ("the date of request"); or
- (c) such longer period as the Department may direct,

the time for making the appeal shall be extended by 14 days from the date on which the form was returned, the date of request or, as the case may be, the date of the Department's direction.

(7) Where a person to whom a form is returned or from whom further particulars are requested does not complete and return the form or send further particulars within the period of time specified in paragraph (6)—

- (a) the Department shall forward a copy of the form or, as the case may be, the letter, together with any other relevant documents or evidence to a legally qualified panel member; and
- (b) that panel member shall determine whether the form or the letter satisfies the requirements of paragraph (1), and shall inform the appellant or applicant and the Department of his determination.

(8) Where—

- (a) a form is duly completed and returned or further particulars are sent after the expiry of the period of time allowed in accordance with paragraph (6); and
- (b) no decision has been made under paragraph (7) at the time the form or the further particulars are received by the Department,

that form or those further particulars shall also be forwarded to the legally qualified panel member who shall take into account any further information or evidence set out in the form or further particulars.

Death of a party to an appeal

34.—(1) In any proceedings, on the death of a party to those proceedings, the Department may appoint such person as it thinks fit to proceed with the appeal in the place of such deceased party.

(2) A grant of probate or letters of administration to the estate of the deceased party, whenever taken out, shall have no effect on an appointment made under paragraph (1).

(3) Where a person appointed under paragraph (1) has, prior to the date of such appointment, taken any action in relation to the appeal on behalf of the deceased party, the effective date of appointment by the Department shall be the day immediately prior to the first day on which such action was taken.

PART V

APPEAL TRIBUNALS FOR SOCIAL SECURITY, CONTRACTING-OUT OF PENSIONS AND CHILD SUPPORT

CHAPTER I

The panel and appeal tribunals

Persons appointed to the panel

35. For the purposes of Article 7(3), the panel shall include persons with the qualifications specified in Schedule 2.

Composition of appeal tribunals

36.—(1) Subject to the following provisions of this regulation, an appeal tribunal, including an appeal tribunal determining a misconceived appeal as a preliminary issue in accordance with regulation 48, shall consist of a legally qualified panel member.

(2) Subject to paragraphs (3) to (5), an appeal tribunal shall consist of a medically qualified panel member and a legally qualified panel member where—

- (a) the issue, or one of the issues, raised on the appeal relates to—
 - (i) incapacity benefit under section 30A of the Contributions and Benefits Act(45),
 - (ii) industrial injuries benefit under Part V of that Act, or
 - (iii) severe disablement allowance under section 68 of that Act(46); or
- (b) the appeal is made under Article 13(1)(b) of the Recovery of Benefits Order.

(3) An appeal tribunal shall consist of a financially qualified panel member and a legally qualified panel member where—

- (a) the issue, or one of the issues, raised on the appeal or referral, relates to child support or a relevant benefit; and
- (b) the appeal or referral may require consideration by members of the appeal tribunal of issues which are, in the opinion of the President, difficult and which relate to—
 - (i) profit and loss accounts, revenue accounts or balance sheets relating to any enterprise,
 - (ii) an income and expenditure account in the case of an enterprise not trading for profit, or
 - (iii) the accounts of any trust fund.

(4) Where the composition of an appeal tribunal would fall to be prescribed under both paragraphs (2) and (3), it shall consist of a medically qualified panel member, a financially qualified panel member and a legally qualified panel member.

(5) Where the composition of an appeal tribunal is prescribed under paragraph (1), (2) or (3), the President may determine that the appeal tribunal shall include such an additional member drawn from the panel as he considers appropriate for the purposes of providing further experience for that additional member or assisting the President in the monitoring of standards of decision-making by panel members.

(6) An appeal tribunal shall consist of a legally qualified panel member, a medically qualified panel member and a panel member with a disability qualification in any appeal which relates to an attendance allowance or a disability living allowance under Part III of the Contributions and Benefits Act or a disability working allowance under section 128 of that Act(47).

Assignment of clerks to appeal tribunals

37. The Department shall assign a clerk to service each appeal tribunal and the clerk so assigned shall be responsible for summoning members of the panel to serve on the tribunal.

CHAPTER II

(45) Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(46) Section 68 was amended by Article 11 of, and paragraph 18 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and regulation 2(2) of S.R. 1994 No. 370

(47) Section 128 was amended by Article 12 of, and paragraph 32 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and paragraph 17 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

Procedure in connection with determination of appeals and referrals

Consideration and determination of appeals and referrals

38.—(1) The procedure in connection with the consideration and determination of an appeal or a referral shall, subject to the following provisions of these Regulations, be such as a legally qualified panel member shall determine.

(2) A legally qualified panel member may give directions requiring a party to the proceedings to comply with any provision of these Regulations and may at any stage of the proceedings, either of his own motion or on a written application made to the clerk to the appeal tribunal by any party to the proceedings, give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to the proceedings to provide such particulars or to produce such documents as may be reasonably required.

(3) Where a clerk to the appeal tribunal is authorised to take steps in relation to the procedure of the tribunal he may give directions requiring any party to the proceedings to comply with any provision of these Regulations.

Directions concerning oral hearings

39.—(1) Where an appeal or a referral is made to an appeal tribunal, the clerk to the appeal tribunal shall direct the appellant and any other party to the proceedings to notify the clerk to the appeal tribunal in writing whether he wishes to have an oral hearing of the appeal or referral or whether he is content for the appeal or referral to proceed without an oral hearing.

(2) Except in the case of a referral, a direction under paragraph (1) shall include a statement informing the appellant that, if he does not respond in writing to the direction within the period specified in paragraph (3), the appeal may be struck out in accordance with regulation 46.

(3) A notification given in accordance with paragraph (1) shall be sent to the clerk to the appeal tribunal within 14 days of the date of issue of the direction under that paragraph or within such longer period as the clerk to the appeal tribunal may direct.

(4) Where a party to the proceedings notifies the clerk to the appeal tribunal in accordance with paragraph (3) that he wishes to have an oral hearing of the appeal or referral, the appeal tribunal shall hold an oral hearing.

(5) The chairman or, in the case of an appeal tribunal which has only one member, that member, may of his own motion direct that an oral hearing of the appeal or referral be held if he is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

Withdrawal of appeals and referrals

40.—(1) An appeal may be withdrawn by the appellant or an authorised representative of his or, as the case may be, a referral may be withdrawn by the Department either—

- (a) at an oral hearing; or
- (b) at any other time before the appeal or referral is determined, by giving notice in writing of the withdrawal to the clerk to the appeal tribunal.

(2) If an appeal or, as the case may be, a referral is withdrawn in accordance with paragraph (1) (a), the clerk to the appeal tribunal shall send notice in writing to any party to the proceedings who is not present when the appeal or referral is withdrawn, informing him that the appeal or, as the case may be, referral has been withdrawn.

(3) If an appeal or, as the case may be, a referral is withdrawn in accordance with paragraph (1) (b), the clerk to the appeal tribunal shall send notice in writing to every party to the proceedings informing them that the appeal or, as the case may be, referral has been withdrawn.

Medical examination required by appeal tribunal

41. For the purposes of Article 20(2), the prescribed condition which shall be satisfied is that the issue, or one of the issues, raised on the appeal—

- (a) is whether the claimant satisfies the conditions for entitlement to—
 - (i) the care component of a disability living allowance specified in section 72(1) and (2) of the Contributions and Benefits Act,
 - (ii) the mobility component of a disability living allowance specified in section 73(1), (8) and (9) of that Act,
 - (iii) an attendance allowance specified in sections 64 and 65(1) of that Act,
 - (iv) a disability working allowance specified in section 128(1)(b) of that Act,
 - (v) incapacity benefit under section 30A of that Act, or
 - (vi) severe disablement allowance under section 68 of that Act;
- (b) relates to the period throughout which the claimant is likely to satisfy the conditions for entitlement to an attendance allowance or a disability living allowance;
- (c) is the rate at which an attendance allowance is payable;
- (d) is the rate at which the care component or the mobility component of a disability living allowance is payable;
- (e) relates to either statutory sick pay or statutory maternity pay and the appeal is made by the employer concerned;
- (f) relates to the extent of a person's disablement and its assessment in accordance with Schedule 6 to the Contributions and Benefits Act;
- (g) is whether the claimant suffers a loss of physical or mental faculty as a result of the relevant accident for the purposes of section 103 of that Act;
- (h) relates to any disease or injury prescribed for the purposes of section 108 of that Act; or
- (i) relates to any payment arising under, or by virtue of a scheme having effect under, section 111 of, and Schedule 8 to, that Act.

Non-disclosure of medical advice or evidence

42.—(1) Where, in connection with the consideration and determination of an appeal or a referral there is before an appeal tribunal medical advice or medical evidence relating to a person which has not been disclosed to him and in the opinion of the chairman or, in the case of an appeal tribunal which has only one member, that member, the disclosure to that person of that advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to that person.

(2) Advice or evidence such as is mentioned in paragraph (1) shall not be disclosed to any person acting for or representing the person to whom it relates or, in a case where a claim for benefit is made by reference to the disability of a person other than the claimant and the advice or evidence relates to that other person, shall not be disclosed to the claimant or any person acting for or representing him, unless the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that it is in the interests of the person to whom the advice or evidence relates to do so.

(3) A tribunal shall not be precluded from taking into account for the purposes of the determination advice or evidence which has not been disclosed to a person under the provisions of paragraph (1) or (2).

Summoning of witnesses and administration of oaths

43.—(1) A chairman or, in the case of an appeal tribunal which has only one member, that member, may by summons require any person in Northern Ireland to attend as a witness at a hearing of an appeal, application or referral at such time and place as shall be specified in the summons and, subject to paragraph (2), at the hearing to answer any question or produce any documents in his custody or under his control which relate to any matter in question in the appeal, application or referral but—

- (a) no person shall be required to attend in obedience to such summons unless he has been given at least 14 days notice of the hearing or, if less than 14 days notice is given, he has informed the tribunal that the notice given is sufficient; and
- (b) no person shall be required to attend and give evidence or to produce any document in obedience to such summons unless the necessary expenses of attendance are paid or tendered to him.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in Northern Ireland.

(3) In exercising the powers conferred by this regulation the chairman or, in the case of an appeal tribunal which has only one member, that member, shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

(4) Every summons issued under this regulation shall contain a statement to the effect that the person in question may apply in writing to the chairman or, in the case of an appeal tribunal which has only one member, that member, to vary or set aside the summons.

(5) A chairman or, in the case of an appeal tribunal which has only one member, that member, may require any witness, including a witness summoned under the powers conferred by this regulation, to give evidence on oath and for that purpose there may be administered an oath in due form.

Confidentiality in child support appeals and referrals

44.—(1) In the circumstances specified in paragraph (2), for the purposes of paragraph 7 of Schedule 1 to the Order, in a child support appeal or referral, the prescribed material is—

- (a) the address of the absent parent, the parent with care, the child or any other person with care of the child; or
- (b) any information the use of which could reasonably be expected to lead to the location of any person specified in sub-paragraph (a).

(2) Except where the appeal is brought against a reduced benefit direction within the meaning of Article 43(11) of the Child Support Order, paragraph (1) applies where, in response to an enquiry from the Department, the absent parent or, as the case may be, the parent with care has within 14 days of the issue of that enquiry notified the Department that he would like the information specified in paragraph (1) which relates to him to remain confidential.

(3) In this regulation “absent parent” and “parent with care” have the same meanings as in Article 2(2) of the Child Support Order.

Consideration of more than one appeal under Article 22 of the Child Support Order

45. An appeal tribunal which is considering an appeal under Article 22 of the Child Support Order in respect of a departure direction which relates to a maintenance assessment may, if it considers it appropriate to do so, consider at the same time any appeal under that Article in respect of another departure direction which relates to the same maintenance assessment.

CHAPTER III

Striking out of appeals

Appeals which may be struck out

46.—(1) Subject to paragraphs (2) and (3), an appeal may be struck out by the clerk to the appeal tribunal—

- (a) where it is an out of jurisdiction appeal and the appellant has been notified by the Department that an appeal brought against such a decision may be struck out;
- (b) for want of prosecution including an appeal not made within the time specified in these Regulations; or
- (c) subject to regulation 39(2), for failure of the appellant to comply with a direction given under these Regulations where the appellant has been notified that failure to comply with the direction could result in the appeal being struck out.

(2) Where the clerk to the appeal tribunal determines to strike out the appeal, he shall notify the appellant that the appeal has been struck out and of the procedure for reinstatement of the appeal as specified in regulation 47.

(3) The clerk to the appeal tribunal may refer any matter for determination under this regulation to a legally qualified panel member for decision by that panel member rather than the clerk to the appeal tribunal.

(4) Subject to regulation 48, a misconceived appeal may be struck out by a legally qualified panel member but such an appeal shall not be struck out unless the appellant has been given notice of—

- (a) the intention to strike out the appeal;
- (b) the ground on which the intention to strike out is based; and
- (c) the requirement to notify the clerk to the appeal tribunal in writing of the matters specified in regulation 48(1)(a) or (b) and that failure to comply with this requirement may result in the appeal being struck out.

Reinstatement of struck out appeals

47. A legally qualified panel member may reinstate an appeal which has been struck out in accordance with regulation 46 or 48(2) where—

- (a) the appellant has made representations or, as the case may be, further representations in support of his appeal with reasons why he considers that his appeal should not have been struck out, to the clerk to the appeal tribunal, in writing within one month of the order to strike out the appeal being issued, and that panel member is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal;
- (b) that panel member is satisfied that the appellant did not receive the notification required under regulation 46(4);
- (c) that panel member is satisfied that the appeal is not an appeal which may be struck out under regulation 46; or
- (d) that panel member is satisfied that notwithstanding that the appeal is one which may be struck out under regulation 46, it is not in the interests of justice for the appeal to be struck out.

Misconceived appeals

48.—(1) Where the appellant has been given notice under regulation 46(4) of the intention to strike out an appeal on the ground that it is a misconceived appeal, he shall within 14 days of the issue of such notice notify the clerk to the appeal tribunal in writing that—

- (a) he wishes the question of whether his appeal is misconceived to be determined by an appeal tribunal as a preliminary issue at an oral hearing; or
- (b) he is content for an appeal tribunal to consider the question of whether his appeal is misconceived as a preliminary issue without an oral hearing and make representations in writing to the clerk to the appeal tribunal as to why he considers that the appeal is not misconceived.

(2) Where the appellant fails to notify or to make representations to the clerk to the appeal tribunal in writing as required by paragraph (1) within the period specified in that paragraph, a legally qualified panel member may strike out the appeal.

(3) Where the appellant notifies the clerk to the appeal tribunal under paragraph (1) within the period specified in that paragraph that he wishes an appeal tribunal to determine the question of whether his appeal is misconceived as a preliminary issue at an oral hearing, the appeal tribunal shall hold an oral hearing for that preliminary issue.

(4) Where the appeal tribunal determines as a preliminary issue that the appeal is a misconceived appeal, the appeal shall be struck out and the clerk to the appeal tribunal shall notify the appellant that the appeal has been struck out.

(5) Where the appeal tribunal determines as a preliminary issue that the appeal is not a misconceived appeal—

- (a) the appeal tribunal shall refer the appeal and all the supporting documentation to the Department together with a statement of the reasons why the appeal tribunal considers that the appeal is not misconceived;
- (b) the clerk to the appeal tribunal shall notify the appellant of the referral of the appeal to the Department and send the appellant a copy of the reasons why the appeal tribunal considers that the appeal is not misconceived;
- (c) the Department may revise or supersede the decision against which the appeal is brought; and
- (d) if the Department does not revise or supersede the decision against which the appeal is brought in the appellant's favour, the Department shall refer the appeal for determination by an appeal tribunal.

(6) Chapter IV of this Part shall apply to an oral hearing held under this regulation.

CHAPTER IV

Oral hearings

Procedure at oral hearings

49.—(1) Subject to the following provisions of this Part, the procedure for an oral hearing shall be such as the chairman or, in the case of an appeal tribunal which has only one member, such as that member, shall determine.

(2) Except where paragraph (3) applies, not less than 14 days notice (beginning with the day on which notice is given and ending on the day before the hearing of the appeal is to take place) of the time and place of any oral hearing of an appeal shall be given to every party to the proceedings, and if such notice has not been given to a person to whom it should have been given under the provisions of this paragraph the hearing may proceed only with the consent of that person.

(3) Any party to the proceedings may waive his right to receive not less than 14 days notice of the time and place of any oral hearing by giving notice to the clerk to the appeal tribunal.

(4) If a party to the proceedings to whom notice has been given under paragraph (2) fails to appear at the hearing, the chairman or, in the case of an appeal tribunal which has only one member, that member, may, having regard to all the circumstances including any explanation offered for the absence, proceed with the hearing notwithstanding his absence, or give such directions with a view to the determination of the appeal as he may think proper.

(5) If a party to the proceedings has waived his right to be given notice under paragraph (2), the chairman or, in the case of an appeal tribunal which has only one member, that member, may proceed with the hearing notwithstanding his absence.

(6) Any oral hearing shall be in public except—

- (a) where the appellant requests a private hearing; or
- (b) where the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that intimate personal or financial circumstances may have to be disclosed or that considerations of national security are involved, in which case the hearing shall be in private.

(7) Any party to the proceedings shall be entitled to be present and be heard at an oral hearing.

(8) A person who has the right to be heard at a hearing may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at the hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled.

(9) The following persons shall also be entitled to be present at an oral hearing (whether or not it is otherwise in private) but shall take no part in the proceedings—

- (a) the President;
- (b) any person undergoing training as a panel member or as a clerk to an appeal tribunal;
- (c) any person acting on behalf of the President in the training or supervision of panel members or in the monitoring of standards of decision-making by panel members; and
- (d) with the leave of the chairman or, in the case of an appeal tribunal which has only one member, that member, and the consent of every party to the proceedings actually present, any other person.

(10) Nothing in paragraph (9) affects the rights of any person mentioned in sub-paragraphs (a) and (b) of that paragraph at any oral hearing where he is sitting as a member of the tribunal or acting as its clerk, and nothing in this regulation prevents the presence at an oral hearing of any witness.

(11) Any person entitled to be heard at an oral hearing may address the tribunal, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

(12) For the purpose of arriving at its decision, an appeal tribunal shall, and for the purpose of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons not being members of the tribunal, other than the person acting as clerk to the appeal tribunal, to withdraw from the hearing except that—

- (a) the President or any person mentioned in paragraph (9)(c); and
- (b) with the leave of the chairman or, in the case of an appeal tribunal which has only one member, that member, any person mentioned in paragraph (9)(b) and (d),

may remain present at any such sitting.

Manner of providing expert assistance

50.—(1) Where an appeal tribunal requires one or more experts to provide assistance to it in dealing with a question of fact of special difficulty under Article 8(4), such an expert shall, if the chairman or, in the case of a tribunal which has only one member, that member, so requests, attend at the hearing and give evidence and if the chairman or that member considers it appropriate, the expert shall enquire into and provide a written report on the question.

(2) A copy of any written report received from an expert in accordance with paragraph (1) shall be supplied to every party to the proceedings.

Postponement and adjournment

51.—(1) Where a person to whom notice of an oral hearing is given wishes to request a postponement of that hearing, he shall do so in writing to the clerk to the appeal tribunal stating his reasons for the request, and the clerk to the appeal tribunal may grant or refuse the request as he thinks fit or may pass the request to a legally qualified panel member who may grant or refuse the request as he thinks fit.

(2) Where the clerk to the appeal tribunal or, as the case may be, the legally qualified panel member refuses a request to postpone the hearing he shall—

- (a) notify in writing the person making the request of the refusal; and
- (b) place before the appeal tribunal at the hearing both the request for the postponement and notification of its refusal.

(3) The legally qualified panel member or the clerk to the appeal tribunal may of his own motion at any time before the beginning of the hearing postpone the hearing.

(4) An oral hearing may be adjourned by the appeal tribunal at any time on the application of any party to the proceedings or of its own motion.

(5) Where a hearing has been adjourned and it is not practicable, or would cause undue delay, for it to be resumed before an appeal tribunal consisting of the same member or members, the appeal or referral shall be heard by a differently constituted appeal tribunal and the proceedings shall be by way of a complete rehearing.

Physical examination at oral hearings

52. For the purposes of Article 20(3), an appeal tribunal may not carry out a physical examination except in a case which relates to—

- (a) the extent of a person's disablement and its assessment in accordance with section 68(6) of, and Schedule 6 to, the Contributions and Benefits Act;
- (b) the extent of a person's disablement and its assessment in accordance with section 103 of that Act; or
- (c) diseases or injuries prescribed for the purposes of section 108 of that Act.

CHAPTER V

Decisions of appeal tribunals and related matters

Decisions of appeal tribunals

53.—(1) Every decision of an appeal tribunal shall be recorded in summary by the chairman or, in the case of an appeal tribunal which has only one member, by that member.

(2) The decision notice specified in paragraph (1) shall be in such written form as shall have been approved by the President and shall be signed by the chairman or, in the case of an appeal tribunal which has only one member, by that member.

(3) As soon as may be practicable after an appeal or a referral has been decided by an appeal tribunal, a copy of the decision notice prepared in accordance with paragraphs (1) and (2) shall be sent or given to every party to the proceedings who shall also be informed of—

- (a) his right under paragraph (4); and
- (b) the conditions governing appeals to a Commissioner or, as the case may be, a Child Support Commissioner.

(4) A party to the proceedings may apply in writing to the chairman or, in the case of an appeal tribunal which has only one member, to that member, for a copy of a statement of the reasons for the tribunal's decision within one month of the sending or giving of the decision notice to every party to the proceedings or within such longer period as may be allowed in accordance with regulation 54.

(5) If the decision is not unanimous, the decision notice specified in paragraph (1) shall record that one of the members dissented and the statement of reasons referred to in paragraph (4) shall include the reasons given by that member for dissenting.

Late applications for statement of reasons for tribunal decision

54.—(1) The time for making an application for a copy of the statement of the reasons for an appeal tribunal's decision may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but no application shall in any event be made more than three months after the date of the sending or giving of the notice of the decision of the appeal tribunal.

(2) An application for an extension of time under this regulation shall be made in writing and shall be determined by a legally qualified panel member.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (4).

(4) The application for an extension of time shall not be granted unless the legally qualified panel member is satisfied that it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4), it is not in the interests of justice to grant the application unless the legally qualified panel member is satisfied that—

- (a) the special circumstances specified in paragraph (6) are relevant to the application; or
- (b) some other special circumstances exist which are wholly exceptional and relevant to the application,

and as a result of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 53(4).

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a spouse or dependant of the applicant has died or suffered serious illness;
- (b) the applicant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant the application, the legally qualified panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time within which the application for a copy of the statement of reasons for an appeal tribunal's decision is to be made and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(8) In determining whether it is in the interests of justice to grant the application, no account shall be taken of the following—

- (a) that the applicant or any person acting for him was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(9) An application under this regulation for an extension of time which has been refused may not be renewed.

(10) The legally qualified panel member who determines an application under this regulation shall record a summary of his decision in such written form as has been approved by the President.

(11) As soon as practicable after the decision is made a copy of the decision shall be sent or given to every party to the proceedings.

(12) Any person who, under paragraph (11), receives a copy of the decision may, within one month of the decision being sent to him, apply in writing for a copy of the reasons for that decision and a copy shall be supplied to him.

(13) In this regulation “Commissioner” includes—

- (a) the Commissioner within the meaning of section 39(1) of the Social Security Act 1998(48); and
- (b) a Child Support Commissioner appointed under section 22 or 23 of the Child Support Act 1991.

Record of tribunal proceedings

55.—(1) A record of the proceedings at an oral hearing, which is sufficient to indicate the evidence taken, shall be made by the chairman or, in the case of an appeal tribunal which has only one member, by that member, in such medium as he may determine.

(2) Such record shall be preserved by the clerk to the appeal tribunal for six months from the date of the decision made by the appeal tribunal to which the record relates and any party to the proceedings may within that period apply in writing for a copy of that record and a copy shall be supplied to him.

Correction of accidental errors

56.—(1) The clerk to the appeal tribunal or, where the clerk refers the matter to a legally qualified panel member, that member, may at any time correct accidental errors in any decision, or the record of any such decision, of an appeal tribunal made under a relevant statutory provision or the Child Support Order.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or record of that decision and written notice of it shall be given as soon as practicable to every party to the proceedings.

(3) In this regulation and regulation 57 “relevant statutory provision” has the same meaning as in Article 28(3).

Setting aside decisions on certain grounds

57.—(1) On an application made by a party to the proceedings, a decision of an appeal tribunal made under a relevant statutory provision or the Child Support Order may be set aside by a legally qualified panel member in a case where it appears just to set the decision aside on the ground that—

- (a) a document relating to the proceedings in which the decision was made was not sent to, or was not received at an appropriate time by, a party to the proceedings or the party's representative or was not received at an appropriate time by the person who made the decision; or
- (b) a party to the proceedings in which the decision was made or the party's representative was not present at a hearing relating to the proceedings.

(2) In determining whether it is just to set aside a decision on the ground set out in paragraph (1) (b), the legally qualified panel member shall determine whether the party making the application gave notice that he wished to have an oral hearing, and if that party did not give such notice the decision shall not be set aside unless the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that the interests of justice manifestly so require.

(3) An application under this regulation shall be made in accordance with regulations 31 to 33.

(4) Where an application to set aside a decision is entertained under paragraph (1), every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(5) Notice in writing of a determination on an application to set aside a decision shall be sent or given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination.

Application for leave to appeal to a Commissioner from an appeal tribunal

58.—(1) An application for leave to appeal to a Commissioner from a decision of an appeal tribunal under Article 13 or 14 shall—

- (a) be made within the period of one month commencing on the date the applicant is sent a written statement of the reasons for the decision against which leave to appeal is sought; and
- (b) have annexed to it a copy of that written statement of the reasons for the decision.

(2) Where an application for leave to appeal to a Commissioner is made by the Department, the clerk to the appeal tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.

(3) Any party to the proceedings who is sent a copy of an application for leave to appeal in accordance with paragraph (2) may make representations in writing within one month of the date on which the application is sent.

(4) A person determining an application for leave to appeal to a Commissioner shall take into account any further representations received from the applicant before the determination is made, and shall record his decision in writing and send a copy to every party to the proceedings.

(5) Where there has been a failure to apply for leave to appeal within the period of time specified in paragraph (1)(a) but an application is made within one year of the last date for making an application within that period, a legally qualified panel member may, if for special reasons he thinks fit, accept and proceed to consider and determine the application.

(6) Where in any case it is impracticable, or it would be likely to cause undue delay for an application for leave to appeal against a decision of an appeal tribunal to be determined by the person who was the chairman or, in the case of an appeal tribunal which had only one member, that member, the application shall be determined by a legally qualified panel member.

PART VI REVOCATIONS

Revocations

59.—(1) The Regulations listed in column (1) of Schedule 3 are hereby revoked to the extent specified in column (3) of that Schedule.

(2) Notwithstanding their revocation for particular purposes, the Regulations listed in column (1) of Schedule 3 shall continue to have full effect up to and including 28th November 1999 in relation to any benefit to which these Regulations do not apply for the time being by virtue of regulation 1(1).

(3) So much of any document as refers expressly or by implication to any regulation revoked by paragraph (1) shall, in so far as the context permits, for the purposes of these Regulations be treated as referring to the corresponding provision of these Regulations.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland
on

29th March 1999.

John O'Neill
Assistant Secretary

I concur.

9th April 1999

Irvine of Lairg, C.

SCHEDULE 1

Regulation 27

Decisions against which no appeal lies

Child benefit

1. A decision of the Department as to whether an educational establishment be recognised for the purposes of Part IX of the Contributions and Benefits Act.

2. A decision of the Department to recognise education provided otherwise than at a recognised educational establishment.

3. A decision of the Department made in accordance with the discretion conferred on it by regulations 2(2)(c)(iii) and 7(3) of the Child Benefit (Residence and Persons Abroad) Regulations (Northern Ireland) 1976(49).

4. A decision of the Department made in accordance with the discretion conferred on it by regulation 2(1) or (3) of the Child Benefit (General) Regulations (Northern Ireland) 1979(50).

Claims and payments

5. A decision of the Department under the Claims and Payments Regulations except a decision under the following provisions of those Regulations—

- (a) regulation 19(51) as to the time for claiming benefit;
- (b) regulation 36AB(52) as to the payment of withheld benefit;
- (c) regulation 37 as to the extinguishment of the right to payment of sums by way of benefit where payment is not obtained within the prescribed period; and
- (d) the following provisions of Schedule 8A(53) and regulation 34A(1)(54) in so far as it relates to them—
 - (i) paragraph 3 relating to the amount deductible by way of housing costs,
 - (ii) paragraph 4 relating to the amount of miscellaneous housing costs payable direct to a third party,
 - (iii) paragraph 4A(55) relating to the direct payment to a third party of benefit payable to or in respect of persons resident in hostels,
 - (iv) paragraph 5 relating to payments of benefit direct to the claimant's or his partner's landlord,
 - (v) paragraph 6 relating to the payment out of benefit of fuel costs,
 - (vi) paragraph 7 relating to the payment out of benefit of rates,
 - (vii) paragraph 7A(56) in connection with amounts payable in place of child support maintenance,
 - (viii) paragraph 7B(57) as to whether an amount in respect of arrears of child support maintenance is to be deducted from a person's jobseeker's allowance, and

(49) S.R. 1976 No. 227, to which there are amendments not relevant to these regulations

(50) S.R. 1979 No. 5, to which there are amendments not relevant to these regulations

(51) Regulation 19 was substituted by regulation 3(7) of S.R. 1997 No. 156 and amended by S.R. 1997 No. 417

(52) Regulation 36AB was inserted by regulation 2(6) of S.R. 1994 No. 345

(53) Schedule 8A was inserted by the Schedule to S.R. 1988 No. 67

(54) Regulation 34A was inserted by regulation 2(2) of S.R. 1988 No. 67 and amended by S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398 and S.R. 1992 No. 271

(55) Paragraph 4A was inserted by regulation 6(7)(d) of S.R. 1991 No. 488 and amended by S.R. 1996 No. 354

(56) Paragraph 7A was inserted by regulation 2(3) of S.R. 1993 No. 146 and amended by S.R. 1996 No. 65

(57) Paragraph 7B was inserted by regulation 2(8)(b) of S.R. 1996 No. 432

(ix) paragraph 9(3)(58) as to the priority between liabilities for items of gas or electricity.

Contracted-out pension schemes

6. A decision of the Department under section 105 of the Pension Schemes Act(59) or any order made under it.

Decisions dependent on other cases

7. A decision of the Department under Article 25 or 26.

European Community regulations

8. An authorisation given by the Department in accordance with Article 22(1) or 55(1) of Council Regulation (EEC) No. 1408/71(60) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

Expenses

9. A decision of the Department whether to pay expenses to any person under section 156 of the Administration Act(61).

Guardian's allowance

10. A decision of the Department relating to the giving of a notice under regulation 5(8) of the Social Security (Guardian's Allowances) Regulations (Northern Ireland) 1975(62).

Income support

11. A decision of the Department which embodies a determination made in accordance with regulation 13(1) or (2).

Industrial injuries benefit

12. A decision of the Department relating to the question whether—

- (a) disablement pension be increased under section 104 of the Contributions and Benefits Act; or
- (b) disablement pension be further increased under section 105 of that Act,

and if an increase is to be granted or renewed, the period for which and the amount at which it is payable.

13. A decision of the Department under regulation 2(2) of the Social Security (Industrial Injuries and Diseases) (Miscellaneous Provisions) Regulations (Northern Ireland) 1986(63) as to the length of any period of interruption of education which is to be disregarded.

(58) Paragraph 9(3) was inserted by regulation 2(8)(d)(ii) of S.R. 1996 No. 432

(59) Section 105 was amended by Article 55 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(60) O.J. No. L149/2, 5.7.1971 (O.J./S.E. 1971 (II) p. 416)

(61) Section 156 was amended by paragraph 49 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and paragraph 8 of Schedule 3 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (S.I. 1997/1183 (N.I. 12))

(62) S.R. 1975 No. 98, to which there are amendments not relevant to these regulations

(63) S.R. 1986 No. 340, to which there are amendments not relevant to these regulations

14. A decision of the Department to approve or not to approve a person undertaking work for the purposes of regulation 15 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984(64).

15. A decision of the Department as to how the limitations under Part VI of Schedule 7 to the Contributions and Benefits Act on the benefit payable in respect of any death are to be applied in the circumstances of any case.

Invalid vehicle scheme

16. A decision of the Department relating to the issue of certificates under regulation 13 of, and Schedule 2 to, the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(65).

Jobseeker's allowance

17.—(1) A decision of the Department under Chapter IV of Part II of the Jobseeker's Allowance Regulations as to the day and the time a claimant is to attend at an office of the Department.

(2) A decision of the Department as to the day of the week on which a claimant is required to provide a signed declaration under regulation 24(10) of the Jobseeker's Allowance Regulations.

(3) A decision of the Department which embodies a determination made in accordance with regulation 15.

Payments on account, overpayments and recovery

18. A decision of the Department under the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(66), except a decision of the Department under the following provisions of those Regulations—

- (a) regulation 3 to offset any interim payment made in anticipation of an award of benefit;
- (b) regulation 4(1) as to the overpayment of an interim payment;
- (c) regulation 5 as to the offsetting of a prior payment against a subsequent award;
- (d) regulation 11(1) as to whether a payment in excess of entitlement has been credited to a bank or other account;
- (e) regulation 13 as to the sums to be deducted in calculating recoverable amounts;
- (f) regulation 14(1) as to the treatment of capital to be reduced;
- (g) regulation 19 determining a claimant's protected earnings; and
- (h) regulation 24 whether a determination as to a claimant's protected earnings is revised or superseded.

Persons abroad

19. A decision of the Department made under—

- (a) regulation 2(1)(a) of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978(67). whether to certify that it is consistent with the proper administration of

(64) S.R. 1984 No. 92; relevant amending regulations are S.R. 1986 No. 340

(65) S.R. 1992 No. 32, to which there are amendments not relevant to these regulations

(66) S.R. 1988 No. 142; relevant amending regulations are S.R. 1992 No. 6, S.R. 1993 No. 175 and S.R. 1996 No. 289

(67) S.R. 1978 No. 114; relevant amending regulations are S.R. 1983 No. 36, S.R. 1984 No. 317, S.R. 1986 No. 340, S.R. 1994 No. 45 and S.R. 1995 No. 150

the Contributions and Benefits Act that a disqualification under section 113(1)(a) of that Act should not apply;

- (b) regulation 9(4) or (5) of those Regulations whether to allow a person to avoid disqualification for receiving benefit during a period of temporary absence from Northern Ireland longer than that specified in that regulation.

Reciprocal agreements

20. A decision of the Department made in accordance with an order made under section 155 of the Administration Act⁽⁶⁸⁾.

Social fund awards

21. A decision of the Department under section 74 of the Administration Act⁽⁶⁹⁾ relating to the recovery of social fund awards.

Suspension

22. A decision of the Department relating to the suspension of a relevant benefit or to the payment of such a benefit which has been suspended under Part III of these Regulations.

Up-rating

23. A decision of the Department relating to the up-rating of benefits under Part IX of the Administration Act.

SCHEDULE 2

Regulation 35

Qualifications of persons appointed to the panel

Legal qualifications

1. Persons who are barristers or solicitors.

Medical qualifications

- 2.—(1) Fully registered medical practitioners, where—
 - (a) the practitioner's name appears on a medical specialist register maintained in any EEA State in accordance with the Medical Directive;
 - (b) the practitioner holds a vocational training certificate or a certificate of acquired rights in an EEA State other than the United Kingdom which shall in his case be recognised in the United Kingdom by virtue of the Medical Directive (whether or not as read with the EEA Agreement) or by virtue of an enforceable community right; or
 - (c) the practitioner does not satisfy the requirements of head (a) or (b), but has not less than 10 years experience in clinical practice, or as a medical analyst or research worker in disciplines which are the same or similar to those undertaken by practitioners to whom those heads apply.

⁽⁶⁸⁾ Section 155 was amended by paragraph 48 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995

⁽⁶⁹⁾ Section 74 was amended by paragraph 186 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) and Article 33(2) of, and paragraph 34 of Schedule 2 to, the Jobseekers (Northern Ireland) Order 1995

(2) In this paragraph—

“EEA Agreement” means the Agreement of the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁷⁰⁾;

“EEA State” means a state which is a contracting party to the EEA Agreement;

“Medical Directive” means Council Directive [93/16/EEC](#) of 5th April 1993 to facilitate the free movement of doctors and the mutual recognitions of their diplomas, certificates and other evidence of formal qualifications⁽⁷¹⁾, as amended by Council Directive [97/50/EC](#) of 6th October 1997⁽⁷²⁾; and

“vocational training certificate” means a diploma, certificate or other evidence of formal qualifications awarded on completion of a course of specific training in general medical practice and referred to in Article 30 of the Medical Directive.

Financial qualifications

3. Accountants who are members of—

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants in Scotland;
- (c) the Institute of Chartered Accountants in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Chartered Institute of Management Accountants; or
- (f) the Chartered Institute of Public Finance and Accountancy.

Disability qualifications

4. Persons, other than registered medical practitioners, who are experienced in dealing with the needs of disabled persons—

- (a) in a professional or voluntary capacity; or
- (b) because they are themselves disabled.

SCHEDULE 3

Regulation 59

Regulations revoked

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Child Support Appeal Tribunals (Procedure) Regulations (Northern Ireland) 1993	S.R. 1993 No. 50	The whole regulations
The Social Security (Incapacity for Work)	S.R. 1995 No. 41	In Part II, Chapter V

⁽⁷⁰⁾ Cm. 2183 and O.J. No. L1, 3.1.1994, p. 572

⁽⁷¹⁾ O.J. No. L165, 7.7.1993, p. 1

⁽⁷²⁾ O.J. No. L921, 24.10.1997, p. 35

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
(General) Regulations (Northern Ireland) 1995		
The Social Security (Incapacity for Work) (Miscellaneous Amendments) Regulations (Northern Ireland) 1995	S.R. 1995 No. 149	Regulation 4(8) and (9)
The Child Support and Income Support (Amendment) Regulations (Northern Ireland) 1995	S.R. 1995 No. 162	Regulation 2
The Social Security (Adjudication) Regulations (Northern Ireland) 1995	S.R. 1995 No. 293	The whole regulations
The Social Security (Adjudication) and Child Support (Amendment) Regulations (Northern Ireland) 1996	S.R. 1996 No. 24	The whole regulations
The Social Security (Industrial Injuries and Diseases) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996	S.R. 1996 No. 57	Regulation 6
The Jobseeker's Allowance Regulations (Northern Ireland) 1996	S.R. 1996 No. 198	Regulation 42
The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 1996	S.R. 1996 No. 317	Regulation 6
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1996	S.R. 1996 No. 355	The whole regulations
The Social Security (Claims and Payments and Adjudication)(Amendment) Regulations (Northern Ireland) 1996	S.R. 1996 No. 432	Regulation 3
The Social Security (Adjudication) and Child Support (Amendment No. 2) Regulations (Northern Ireland) 1996	S.R. 1996 No. 457	The whole regulations

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1996	S.R. 1996 No. 499	The whole regulations
The Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996	S.R. 1996 No. 541	Regulation 53
The Child Support (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1996	S.R. 1996 No. 590	Regulation 4
The Income-related Benefits and Jobseeker's Allowance (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 22	Regulation 15
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1997	S.R. 1997 No. 156	Regulation 4
The Social Security (Industrial Injuries) (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 158	Regulation 3
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1997	S.R. 1997 No. 164	The whole regulations
The Social Security (Attendance Allowance and Disability Living Allowance) (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 355	Regulation 4
The Social Security (Claims and Payments and Adjudication) (Amendment) Regulations (Northern Ireland) 1997	S.R. 1997 No. 417	Regulations 3 and 4
The Social Security (Recovery of Benefits) (Appeals) Regulations (Northern Ireland) 1997	S.R. 1997 No. 430	The whole regulations

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 1997	S.R. 1997 No. 435	Regulation 4
The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 1998	S.R. 1998 No. 8	Regulation 8

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations are made by virtue of, or in consequence of, provisions of the Social Security (Northern Ireland) Order 1998 (“the Order”) and supplement changes introduced by that Order to the decision-making process for social security and related matters. The Regulations also provide for the procedural rules and other requirements of a new unified appeals system introduced by the Order for social security, contracting-out of pensions and child support.

Part I contains provisions relating to the citation, commencement and interpretation of the Regulations and the service of notices or documents.

Part II makes provision for decisions by the Department of Health and Social Services in social security and related matters. Chapters I and II provide for the circumstances in which the Department may revise or supersede decisions, when such decisions take effect and related procedural rules. Chapter III contains miscellaneous provisions relating to decisions of the Department in social security, including certain relevant requirements formerly contained in regulations now being revoked and provision in relation to industrial injuries benefit enabling the Department to seek advice from a medical practitioner.

Part III makes provision for the suspension and termination of benefit and for dealing with decisions where there are related appeals or decisions.

Part IV concerns rights of appeal and the procedure for bringing appeals. Chapter I makes provision for additional persons to have a right of appeal, for decisions (other than those in the Order) against which there is no right of appeal and decisions where there is a right of appeal. It also provides procedural rules for bringing appeals. Chapter II provides for general appeals matters including those relating to child support.

Part V makes provision for appeal tribunals for social security, contracting-out of pensions and child support. Chapter I provides for the panel from which appeal tribunal members are drawn to include people with specified qualifications, for requirements relating to the composition of appeal tribunals and the assignment of clerks to tribunals. Chapter II makes provision for procedural requirements in the determination of appeals and referrals (including withdrawal of appeals and referrals), medical examinations and witnesses. Chapter III provides for the striking out of certain appeals and related procedures. Chapter IV provides for procedures at oral hearings. Chapter V

makes provision relating to the decisions of appeal tribunals and applications for leave to appeal to a Social Security Commissioner.

Part VI provides for revocations.

Articles 7(3), 8(6), 10(1), (4) and (6), 11(3) and (6), 12(1), 13(2), (3), (6) and (7), 15(10)(a) and (11), 16(1), 17, 18(1), 20, 21(1) to (3), 22 to 24, 25(3)(b) and (5)(c), 26(6)(c), 28(1) and 31(2) of, and paragraphs 7, 11 and 12 of Schedule 1, paragraph 9 of Schedule 2, paragraphs 1, 4 and 9 of Schedule 3 and Schedule 4 to, the Order, some of the enabling provisions under which these Regulations are made, were brought into operation, for the purpose only of authorising the making of regulations on 10th March 1999, by virtue of the Social Security (1998 Order) (Commencement No. 4) Order (Northern Ireland) 1999 (S.R. [1999 No. 102](#) (C. 13)).

As these Regulations are made by virtue of, or are consequential upon, provisions of the Order and are made before the end of the period of 6 months from the commencement of those provisions, they are, accordingly, exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992, from prior reference to the Social Security Advisory Committee.