

## SCHEDULES

### SCHEDULE 5

#### ADJUDICATION

##### PART I

###### AMENDMENT OF ENACTMENTS

###### *Social Security Act 1973 (c. 38)*

- 1 In section 67(2) of the Social Security Act 1973 (review of determinations by Occupational Pensions Board) the words "or was erroneous in point of law " shall be inserted at the end of paragraph (a).

###### *Social Security Act 1975 (c. 14)*

- 2 Section 95 of the Social Security Act 1975 (other questions for Secretary of State) shall cease to have effect.
- 3 The following subsection shall be substituted for subsection (1) of section 96 of that Act (review of certain decisions of Secretary of State)—
- “(1) Subject to subsection (2) below, the Secretary of State may review any decision given by him on any question within section 93(1) above if—
- (a) new facts have been brought to his notice; or
  - (b) he is satisfied that the decision—
    - (i) was given in ignorance of some material fact;
    - (ii) was based on a mistake as to some material fact; or
    - (iii) was erroneous in point of law.”.
- 4 The following subsections shall be substituted for subsection (2) of section 98 of that Act (claims and questions to be submitted to adjudication officer)—
- “(2) Subsection (1) above does not apply to any question which falls to be determined otherwise than by an adjudication officer.
- (2A) If—
- (a) a person submits a question relating to the age, marriage or death of any person ; and
  - (b) it appears to the adjudication officer that the question may arise if the person who has submitted it to him submits a claim for benefit, the adjudication officer may determine the question.”.
- 5 The following subsection shall be substituted for subsection (2) of section 99 of that Act (decision of adjudication officer)—

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“(2) Subject to section 103 below (reference of special questions), the adjudication officer may decide a claim or question himself or refer it to a social security appeal tribunal.”.

- 6 In section 100 of that Act (appeal to social security appeal tribunal)—
- (a) in subsection (1), the words " adversely to the claimant" shall be omitted;
  - (b) in subsection (2), for the words from " notified " to the end there shall be substituted the words " given any such notification of a decision and of his right of appeal under this section as may be prescribed. " ;
  - (c) for the words from the beginning of subsection (3) to the end of paragraph (b) there shall be substituted the words " Where in connection with the decision of the adjudication officer there has arisen any question which under or by virtue of this Act falls to be determined otherwise than by an adjudication officer " ;
  - (d) the following subsection shall be substituted for subsection (4)—
    - “(4) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.”;
  - (e) the following subsection shall be substituted for subsection (7)—
    - “(7) Where an adjudication officer has determined that any amount is recoverable under or by virtue of section 27 or 53 of the Social Security Act 1986 (over payments) any person from whom he has determined that it is recoverable shall have the same right of appeal to a social security appeal tribunal as a claimant.”.
- 7 (1) At the end of subsection (1) of section 101 of that Act (appeal from tribunal to Commissioner) there shall be added the words " on the ground that the decision of the tribunal was erroneous in point of law. " .
- (2) The following paragraph shall be substituted for paragraph (d) of subsection (2) of that section—
- “(d) a person from whom it is determined that any amount is recoverable under or by virtue of section 27 or 53 of the Social Security Act 1986.”.
- (3) The following subsections shall be substituted for subsection (5) of that section—
- “(5) Where the Commissioner holds that the decision was erroneous in point of law—
    - (a) he shall have power—
      - (i) to give the decision which he considers the tribunal should have given, if he can do so without making fresh or further findings of fact; or
      - (ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them ; and
    - (b) in any other case he shall refer the case to a tribunal with directions for its determination.
- (5A) No appeal lies under this section without the leave—

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- (a) of the person who was the chairman of the tribunal when the decision was given or, in a case prescribed by regulations, the leave of some other chairman of a social security appeal tribunal; or
- (b) subject to and in accordance with regulations, of a Commissioner.

(5B) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought and applications made for leave to appeal.”.

8 The following subsection shall be substituted for subsection (2) of section 102 of that Act (question first arising on appeal)—

“(2) Subsection (1) above does not apply to any question which under or by virtue of this Act falls to be determined otherwise than by an adjudication officer.”.

9 The following section shall be substituted for section 103 of that Act—

**“103 Reference of special questions.**

(1) Subject to subsection (2) below—

- (a) if on consideration of any claim or question an adjudication officer is of opinion that there arises any question which under or by virtue of this Act falls to be determined otherwise than by an adjudication officer, he shall refer the question for such determination; and
- (b) if on consideration of any claim or question a social security appeal tribunal or a Commissioner is of opinion that any such question arises, the tribunal or Commissioner shall direct it to be referred by an adjudication officer for such determination.

(2) The person or tribunal making the reference shall then deal with any other question as if the referred question had not arisen.

(3) The adjudication officer, tribunal or Commissioner may—

- (a) postpone the reference of, or dealing with, any question until other questions have been determined ;
- (b) in cases where the determination of any question disposes of a claim or any part of it make an award or decide that an award cannot be made, as to the claim or that part of it, without referring or dealing with, or before the determination of, any other question.”.

10 In section 104 of that Act (review of decisions of adjudication officers, tribunals or Commissioner)—

(a) the following subsection shall be substituted for subsection (1)—

“(1) Any decision under this Act of an adjudication officer, a social security appeal tribunal or a Commissioner may be reviewed at any time by an adjudication officer, or, on a reference by an adjudication officer, by a social security appeal tribunal, if—

- (a) the officer or tribunal is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
- (b) there has been any relevant change of circumstances since the decision was given; or

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- (c) the decision was based on a decision of a question which under or by virtue of this Act falls to be determined otherwise than by an adjudication officer, and the decision of that question is revised,  
but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer or tribunal is satisfied as mentioned in that paragraph by fresh evidence.”;
- (b) in subsection (1A), the words " in prescribed circumstances " shall cease to have effect;
- (c) the following subsection shall be inserted after subsection (3)—  
“(3A) Regulations may provide for enabling or requiring, in prescribed circumstances, a review under this section notwithstanding that no application under subsection (2) has been made.”; and
- (d) the following subsection shall be added after subsection (4)—  
“(5) Regulations—  
(a) may prescribe what are, or are not, relevant changes of circumstances for the purposes of subsection (1)(b) above; and  
(b) may make provision restricting the payment of any benefit, or any increase of benefit, to which a person would, but for this subsection, be entitled by reason of a review in respect of any period before the review.”.
- 11 (1) In section 106(1) of that Act (review of decision of Attendance Allowance Board) in paragraph (b) before the word " within " there shall be inserted the words " on an application made ".
- (2) The following paragraph shall be inserted after that paragraph—  
“(bb) without an application review such a determination on any ground within the prescribed period ;”.
- 12 In section 107(6) of that Act (declaration that accident is an industrial accident)—  
(a) the words " or was not" shall be inserted after the words " accident was " ; and  
(b) the words " by fresh evidence " and paragraph (b) shall cease to have effect.
- 13 In section 109(3) of that Act (medical appeals and references) after the words " by a medical appeal tribunal," there shall be inserted the words " or, if the adjudication officer is of the opinion that any such decision ought to be so considered, ".
- 14 In section 110 of that Act (review of medical decisions)—  
(a) in subsection (1), the words " by fresh evidence " shall cease to have effect; and  
(b) the following subsections shall be inserted after that subsection—  
“(1A) Any decision under this Part of this Act of an adjudicating medical practitioner may be reviewed at any time by such a practitioner if he is satisfied that the decision was erroneous in point of law.  
(1B) Regulations may provide that a decision may not be reviewed under subsection (1) above unless the adjudicating medical

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- practitioner is satisfied as mentioned in that subsection by fresh evidence.”.
- 15 In section 112 of that Act (appeal etc. on question of law to Commissioner)—
- (a) in subsection (1), the following paragraph shall be inserted before paragraph (a)—
    - “(za) an adjudication officer ; or”; and
  - (b) in subsection (3), for the words from " without the leave " to " and regulations" there shall be substituted—
    - “without the leave—
    - (a) of the person who was the chairman of the medical appeal tribunal when the decision was given or, in a case prescribed by regulations, the leave of some other chairman of a medical appeal tribunal; or
    - (b) subject to and in accordance with regulations, of a Commissioner,and regulations”.
- 16 In section 114 of that Act (regulations as to determination of questions)—
- (a) the following subsections shall be inserted after subsection (2A)—
    - “(2B) Regulations under subsection (1) above may provide for the review by the Secretary of State of decisions on questions determined by him.
    - (2C) The Lord Chancellor may by regulations provide—
      - (a) for officers authorised—
        - (i) by the Lord Chancellor ; or
        - (ii) in Scotland, by the Secretary of State,to determine any question which is determinable by a Commissioner and which does not involve the determination of any appeal, application for leave to appeal or reference;
      - (b) for the procedure to be followed by any such officer in determining any such question;
      - (c) for the manner in which determinations of such questions by such officers may be called in question.
    - (2D) A determination which would have the effect of preventing an appeal, application for leave to appeal or reference being determined by a Commissioner is not a determination of the appeal, application or reference for the purposes of subsection (2C) above.”; and
  - (b) subsections (3) and (4) shall cease to have effect.
- 17 The following subsection shall be inserted after section 166(5) of that Act (regulations)—
- “(5A) Where the Lord Chancellor proposes to make regulations under this Act it shall be his duty to consult the Lord Advocate with respect to the proposal.”.

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- 18 In paragraph 2(2) of Schedule 12 to that Act (appointment of members of medical appeal tribunals) for the words " Secretary of State " there shall be substituted the word " President " .
- 19 In Schedule 13 to that Act (provision which may be made by procedure regulations)
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- (a) the following paragraph shall be inserted after paragraph 1—
- “1A Provision as to the striking out of proceedings for want of prosecution.”;
- (b) in paragraph 10, for the words from " the determination " to the end there shall be substituted the words " a determination. " .
- 20 In Schedule 20 to that Act (glossary of expressions), for the definition of " Regulations " there shall be substituted the following definition—

““Regulations”

In relation to regulations with respect to proceedings before the Commissioners (whether for the determination of any matter or for leave to appeal to or from the Commissioners) and to regulations under section 114(2C) above regulations made by the Lord Chancellor under this Act and in relation to other regulations, regulations made by the Secretary of State under this Act.”