



# Social Security Act 1998

## 1998 CHAPTER 14

### PART I

#### DECISIONS AND APPEALS

#### CHAPTER I

##### GENERAL

##### *Decisions*

#### **1 Transfer of functions to Secretary of State**

The following functions are hereby transferred to the Secretary of State, namely—

- (a) the functions of adjudication officers appointed under section 38 of the Social Security Administration Act 1992 (“the Administration Act”);
- (b) the functions of social fund officers appointed under section 64 of that Act; and
- (c) the functions of child support officers appointed under section 13 of the Child Support Act 1991 (“the Child Support Act”).

#### **2 Use of computers**

- (1) Any decision, determination or assessment falling to be made or certificate falling to be issued by the Secretary of State under or by virtue of a relevant enactment, or in relation to a war pension, may be made or issued not only by an officer of his acting under his authority but also—
  - (a) by a computer for whose operation such an officer is responsible; and
  - (b) in the case of a decision, determination or assessment that may be made or a certificate that may be issued by a person providing services to the Secretary of State, by a computer for whose operation such a person is responsible.

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- (2) In this section “relevant enactment” means any enactment contained in—
- (a) Chapter II of this Part;
  - (b) the Social Security Contributions and Benefits Act 1992 (“the Contributions and Benefits Act”);
  - (c) the Administration Act;
  - (d) the Child Support Act;
  - (e) the Social Security (Incapacity for Work) Act 1994;
  - (f) the Jobseekers Act 1995 (“the Jobseekers Act”);
  - (g) the Child Support Act 1995; or
  - (h) the Social Security (Recovery of Benefits) Act 1997.
- (3) In this section and section 3 below “war pension” has the same meaning as in section 25 of the Social Security Act 1989 (establishment and functions of war pensions committees).

### **3 Use of information**

- (1) Subsection (2) below applies to information relating to social security, child support or war pensions which is held—
- (a) by the Secretary of State or the Northern Ireland Department; or
  - (b) by a person providing services to the Secretary of State or the Northern Ireland Department in connection with the provision of those services.
- (2) Information to which this subsection applies—
- (a) may be used for the purposes of, or for any purposes connected with, the exercise of functions in relation to social security, child support or war pensions; and
  - (b) may be supplied to, or to a person providing services to, the Secretary of State or the Northern Ireland Department for use for those purposes.
- (3) The following sections, namely—
- (a) section 122C of the Administration Act (supply of information to authorities administering benefit); and
  - (b) section 122D of that Act (supply of information by authorities administering benefit),
- shall each have effect as if the reference in subsection (1) to social security included references to child support and war pensions.
- (4) In this section “the Northern Ireland Department” means the Department of Health and Social Services for Northern Ireland.

### *Appeals*

### **4 Unified appeal tribunals**

- (1) Subject to the provisions of this Act—
- (a) the functions of social security appeal tribunals, disability appeal tribunals and medical appeal tribunals constituted under Part II of the Administration Act;
  - (b) the functions of child support appeal tribunals established under section 21 of the Child Support Act; and

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- (c) the functions of vaccine damage tribunals established by regulations made under section 4 of the Vaccine Damage Payments Act 1979 (“the Vaccine Damage Payments Act”),

are hereby transferred to appeal tribunals constituted under the following provisions of this Chapter.

- (2) Accordingly appeals under—
  - (a) section 12 below;
  - (b) section 20 of the Child Support Act, as substituted by section 42 below;
  - (c) section 4 of the Vaccine Damage Payments Act, as substituted by section 46 below; and
  - (d) section 11 of the Social Security (Recovery of Benefits) Act 1997,shall be determined by appeal tribunals so constituted (in the following provisions of this Chapter referred to as “appeal tribunals”).

## **5 President of appeal tribunals**

- (1) The Lord Chancellor may, after consultation with the Lord Advocate, appoint a President of appeal tribunals.
- (2) A person is qualified to be appointed President if—
  - (a) he has a 10 year general qualification (construed in accordance with section 71 of the Courts and Legal Services Act 1990); or
  - (b) he is an advocate or solicitor in Scotland of at least 10 years' standing.
- (3) Schedule 1 to this Act shall have effect for supplementing this section.

## **6 Panel for appointment to appeal tribunals**

- (1) The Lord Chancellor shall constitute a panel of persons to act as members of appeal tribunals.
- (2) Subject to subsection (3) below, the panel shall be composed of such persons as the Lord Chancellor thinks fit to appoint after consultation, in the case of medical practitioners, with the Chief Medical Officer.
- (3) The panel shall include persons possessing such qualifications as may be prescribed by regulations made with the concurrence of the Lord Chancellor.
- (4) The numbers of persons appointed to the panel, and the terms and conditions of their appointments, shall be determined by the Lord Chancellor with the consent of the Secretary of State.
- (5) A person may be removed from the panel by the Lord Chancellor on the ground of incapacity or misbehaviour.
- (6) In this section “the Chief Medical Officer” means—
  - (a) in relation to England, the Chief Medical Officer of the Department of Health;
  - (b) in relation to Wales, the Chief Medical Officer of the Welsh Office; and
  - (c) in relation to Scotland, the Chief Medical Officer of the Scottish Office.

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## **7 Constitution of appeal tribunals**

- (1) Subject to subsection (2) below, an appeal tribunal shall consist of one, two or three members drawn by the President from the panel constituted under section 6 above.
- (2) The member, or (as the case may be) at least one member, of an appeal tribunal must—
  - (a) have a general qualification (construed in accordance with section 71 of the Courts and Legal Services Act 1990); or
  - (b) be an advocate or solicitor in Scotland.
- (3) Where an appeal tribunal has more than one member—
  - (a) the President shall nominate one of the members as chairman;
  - (b) decisions shall be taken by a majority of votes; and
  - (c) unless regulations otherwise provide, the chairman shall have any casting vote.
- (4) Where it appears to an appeal tribunal that a matter before it involves a question of fact of special difficulty, then, unless regulations otherwise provide, the tribunal may require one or more experts to provide assistance to it in dealing with the question.
- (5) In subsection (4) above “expert” means a member of the panel constituted under section 6 above who appears to the appeal tribunal concerned to have knowledge or experience which would be relevant in determining the question of fact of special difficulty.
- (6) Regulations shall make provision with respect to—
  - (a) the composition of appeal tribunals;
  - (b) the procedure to be followed in allocating cases among differently constituted tribunals; and
  - (c) the manner in which expert assistance is to be given under subsection (4) above.
- (7) Schedule 1 to this Act shall have effect for supplementing this section.

## **CHAPTER II**

### SOCIAL SECURITY DECISIONS AND APPEALS

#### *Decisions*

## **8 Decisions by Secretary of State**

- (1) Subject to the provisions of this Chapter, it shall be for the Secretary of State—
  - (a) to decide any claim for a relevant benefit;
  - (b) to decide any claim for a social fund payment mentioned in section 138(1)(b) of the Contributions and Benefits Act;
  - (c) subject to subsection (5) below, to make any decision that falls to be made under or by virtue of a relevant enactment; and
  - (d) subject to and in accordance with regulations, to decide any issue arising as to, or in connection with, entitlement to statutory sick pay or statutory maternity pay.

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- (2) Where at any time a claim for a relevant benefit is decided by the Secretary of State—
  - (a) the claim shall not be regarded as subsisting after that time; and
  - (b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.
- (3) In this Chapter “relevant benefit”, subject to section 21(4) below, means any of the following, namely—
  - (a) benefit under Parts II to V of the Contributions and Benefits Act;
  - (b) a jobseeker’s allowance;
  - (c) income support;
  - (d) family credit;
  - (e) disability working allowance;
  - (f) a social fund payment mentioned in section 138(1)(a) or (2) of the Contributions and Benefits Act;
  - (g) child benefit;
  - (h) such other benefit as may be prescribed.
- (4) In this section “relevant enactment” means any enactment contained in this Chapter, the Contributions and Benefits Act, the Administration Act, the Social Security (Consequential Provisions) Act 1992 or the Jobseekers Act, other than one contained in—
  - (a) Part VII of the Contributions and Benefits Act so far as relating to housing benefit and council tax benefit;
  - (b) Part VIII of the Administration Act (arrangements for housing benefit and council tax benefit and related subsidies).
- (5) Subsection (1)(c) above does not include any decision relating to Class 4 contributions other than a decision falling to be made—
  - (a) under subsection (1) of section 17 of the Contributions and Benefits Act as to whether by regulations under that subsection a person is excepted from liability for Class 4 contributions, or his liability is deferred; or
  - (b) under regulations made by virtue of subsection (3) or (4) of that section or section 18 of that Act.

## **9 Revision of decisions**

- (1) Subject to section 36(3) below, any decision of the Secretary of State under section 8 above or section 10 below may be revised by the Secretary of State—
  - (a) either within the prescribed period or in prescribed cases or circumstances; and
  - (b) either on an application made for the purpose or on his own initiative;and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised.
- (2) In making a decision under subsection (1) above, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.
- (3) Subject to subsections (4) and (5) and section 27 below, a revision under this section shall take effect as from the date on which the original decision took (or was to take) effect.

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- (4) Regulations may provide that, in prescribed cases or circumstances, a revision under this section shall take effect as from such other date as may be prescribed.
- (5) Where a decision is revised under this section, for the purpose of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.
- (6) Except in prescribed circumstances, an appeal against a decision of the Secretary of State shall lapse if the decision is revised under this section before the appeal is determined.

## **10 Decisions superseding earlier decisions**

- (1) Subject to subsections (3) and (4) and section 36(3) below, the following, namely—
  - (a) any decision of the Secretary of State under section 8 above or this section, whether as originally made or as revised under section 9 above; and
  - (b) any decision under this Chapter of an appeal tribunal or a Commissioner, may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on his own initiative.
- (2) In making a decision under subsection (1) above, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.
- (3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this section.
- (4) Subsection (1)(a) above does not apply in the case of a decision of the Secretary of State under subsection (1)(c) of section 8 above where the relevant enactment within the meaning of that section is section 121C or 121D of the Administration Act (liability of directors etc. for company's contributions).
- (5) Subject to subsection (6) and section 27 below, a decision under this section shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.
- (6) Regulations may provide that, in prescribed cases or circumstances, a decision under this section shall take effect as from such other date as may be prescribed.

## **11 Regulations with respect to decisions**

- (1) Subject to the provisions of this Chapter and the Administration Act, provision may be made by regulations for the making of any decision by the Secretary of State under or in connection with the current legislation, or the former legislation, including a decision on a claim for benefit.
- (2) Where it appears to the Secretary of State that a matter before him involves a question of fact requiring special expertise, he may direct that in dealing with that matter he shall have the assistance of one or more experts.
- (3) In this section—
  - “the current legislation” means the Contributions and Benefits Act, the Jobseekers Act and the Social Security (Recovery of Benefits) Act 1997;

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“expert” means a person appearing to the Secretary of State to have knowledge or experience which would be relevant in determining the question of fact requiring special expertise;

“the former legislation” means the National Insurance Acts 1965 to 1974, the National Insurance (Industrial Injuries) Acts 1965 to 1974, the Social Security Act 1975 and Part II of the Social Security Act 1986.

### *Appeals*

## **12 Appeal to appeal tribunal**

- (1) This section applies to any decision of the Secretary of State under section 8 or 10 above (whether as originally made or as revised under section 9 above) which—
  - (a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2 to this Act;
  - (b) is made otherwise than on such a claim or award, and falls within Schedule 3 to this Act; or
  - (c) relates to statutory sick pay or statutory maternity pay.
- (2) In the case of a decision to which this section applies—
  - (a) if it relates to statutory sick pay or statutory maternity pay, the employee and employer concerned shall each have a right to appeal to an appeal tribunal; and
  - (b) in any other case, the claimant and such other person as may be prescribed shall have a right to do so;but nothing in this subsection shall confer a right of appeal in relation to a prescribed decision, or a prescribed determination embodied in or necessary to a decision.
- (3) Regulations under subsection (2) above shall not prescribe any decision or determination that relates to the conditions of entitlement to a relevant benefit for which a claim has been validly made or for which no claim is required.
- (4) Where the Secretary of State has determined that any amount is recoverable under or by virtue of section 71 or 74 of the Administration Act, any person from whom he has determined that it is recoverable shall have the same right of appeal to an appeal tribunal as a claimant.
- (5) In any case where—
  - (a) the Secretary of State has made a decision in relation to a claim under Part V of the Contributions and Benefits Act; and
  - (b) the entitlement to benefit under that Part of that Act of any person other than the claimant is or may be, under Part VI of Schedule 7 to that Act, affected by that decision,that other person shall have the same right of appeal to an appeal tribunal as the claimant.
- (6) A person with a right of appeal under this section shall be given such notice of a decision to which this section applies and of that right as may be prescribed.
- (7) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.
- (8) In deciding an appeal under this section, an appeal tribunal—

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- (a) need not consider any issue that is not raised by the appeal; and
  - (b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.
- (9) The reference in subsection (1) above to a decision under section 10 above is a reference to a decision superseding any such decision as is mentioned in paragraph (a) or (b) of subsection (1) of that section.

### **13 Redetermination etc. of appeals by tribunal**

- (1) This section applies where an application is made to a person under section 14(10)(a) below for leave to appeal from a decision of an appeal tribunal.
- (2) If the person considers that the decision was erroneous in point of law, he may set aside the decision and refer the case either for redetermination by the tribunal or for determination by a differently constituted tribunal.
- (3) If each of the principal parties to the case expresses the view that the decision was erroneous in point of law, the person shall set aside the decision and refer the case for determination by a differently constituted tribunal.
- (4) In this section and section 14 below “principal parties” means—
- (a) in a case relating to statutory sick pay or statutory maternity pay, the persons mentioned in subsection (2)(a), (b) and (c) of that section;
  - (b) in any other case—
    - (i) the persons mentioned in subsection (3)(a) and (b) of that section; and
    - (ii) where applicable, the person mentioned in subsection (3)(d) and such a person as is first mentioned in subsection (4) of that section.

### **14 Appeal from tribunal to Commissioner**

- (1) Subject to the provisions of this section, an appeal lies to a Commissioner from any decision of an appeal tribunal under section 12 or 13 above on the ground that the decision of the tribunal was erroneous in point of law.
- (2) In the case of statutory sick pay or statutory maternity pay an appeal lies under this section at the instance of any of the following—
- (a) the Secretary of State;
  - (b) the employee concerned;
  - (c) the employer concerned;
  - (d) a trade union, where—
    - (i) the employee is a member of the union at the time of the appeal and was so immediately before the matter in question arose; or
    - (ii) the matter in question concerns the entitlement of a deceased person who was at the time of his death a member of the union; and
  - (e) an association of employers of which the employer is a member at the time of the appeal and was so immediately before the matter in question arose.
- (3) In any other case an appeal lies under this section at the instance of any of the following—
- (a) the Secretary of State;
  - (b) the claimant and such other person as may be prescribed;



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- (c) in any of the cases mentioned in subsection (5) below, a trade union; and
  - (d) a person from whom it is determined that any amount is recoverable under or by virtue of section 71 or 74 of the Administration Act.
- (4) In a case relating to industrial injuries benefit an appeal lies under this section at the instance of a person whose entitlement to benefit is, or may be, under Part VI of Schedule 7 to the Contributions and Benefits Act, affected by the decision appealed against, as well as at the instance of any person or body such as is mentioned in subsection (3) above.
- (5) The following are the cases in which an appeal lies at the instance of a trade union—
  - (a) where the claimant is a member of the union at the time of the appeal and was so immediately before the matter in question arose;
  - (b) where that matter in any way relates to a deceased person who was a member of the union at the time of his death;
  - (c) where the case relates to industrial injuries benefit and the claimant or, in relation to industrial death benefit, the deceased, was a member of the union at the time of the relevant accident.
- (6) Subsections (2), (3) and (5) above, as they apply to a trade union, apply also to any other association which exists to promote the interests and welfare of its members.
- (7) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a tribunal with directions for its determination.
- (8) Where the Commissioner holds that the decision appealed against was erroneous in point of law, he shall set it aside and—
  - (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.
- (9) Subject to any direction of the Commissioner, a reference under subsection (7) or (8) (b) above shall be to a differently constituted tribunal.
- (10) No appeal lies under this section without the leave—
  - (a) of the person who constituted, or was the chairman of, the tribunal when the decision was given or, in a prescribed case, the leave of such other person as may be prescribed; or
  - (b) subject to and in accordance with regulations, of a Commissioner.
- (11) 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.
- (12) Schedule 4 to this Act shall have effect with respect to the appointment, remuneration and tenure of office of Commissioners and other matters relating to them.

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## **15 Appeal from Commissioner on point of law**

- (1) Subject to subsections (2) and (3) below, an appeal on a question of law shall lie to the appropriate court from any decision of a Commissioner.
- (2) No appeal under this section shall lie from a decision except—
  - (a) with the leave of the Commissioner who gave the decision or, in a prescribed case, with the leave of a Commissioner selected in accordance with regulations; or
  - (b) if he refuses leave, with the leave of the appropriate court.
- (3) An application for leave under this section in respect of a Commissioner’s decision may only be made by—
  - (a) a person who, before the proceedings before the Commissioner were begun, was entitled to appeal to the Commissioner from the decision to which the Commissioner’s decision relates;
  - (b) any other person who was a party to the proceedings in which the first decision mentioned in paragraph (a) above was given;
  - (c) any other person who is authorised by regulations to apply for leave;
 and regulations may make provision with respect to the manner in which and the time within which applications must be made to a Commissioner for leave under this section and with respect to the procedure for dealing with such applications.
- (4) On an application to a Commissioner for leave under this section it shall be the duty of the Commissioner to specify as the appropriate court—
  - (a) the Court of Appeal if it appears to him that the relevant place is in England or Wales;
  - (b) the Court of Session if it appears to him that the relevant place is in Scotland; and
  - (c) the Court of Appeal in Northern Ireland if it appears to him that the relevant place is in Northern Ireland,
 except that if it appears to him, having regard to the circumstances of the case and in particular to the convenience of the persons who may be parties to the proposed appeal, that he should specify a different court mentioned in paragraphs (a) to (c) above as the appropriate court, it shall be his duty to specify that court as the appropriate court.
- (5) In this section—
 

“the appropriate court”, except in subsection (4) above, means the court specified in pursuance of that subsection;

“the relevant place”, in relation to an application for leave to appeal from a decision of a Commissioner, means the premises where the person or authority whose decision was the subject of the Commissioner’s decision usually exercises his or its functions.

*Procedure etc.*

## **16 Procedure**

- (1) Regulations (“procedure regulations”) may make any such provision as is specified in Schedule 5 to this Act.

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- (2) Procedure regulations prescribing the procedure to be followed in cases before a Commissioner shall provide that any hearing shall be in public except in so far as the Commissioner for special reasons otherwise directs.
- (3) It is hereby declared—
- (a) that the power to prescribe procedure includes power to make provision as to the representation of one person, at any hearing of a case, by another person whether having professional qualifications or not; and
  - (b) that the power to provide for the procedure to be followed in connection with the making of decisions by the Secretary of State includes power to make provision with respect to the formulation of the matters to be decided, whether on a reference under section 117 of the Administration Act or otherwise.
- (4) Subsection (5) below applies to any issue—
- (a) as to whether a Class 1A contribution is payable, or otherwise relating to a Class 1A contribution; or
  - (b) relating to emoluments in respect of which a Class 1A contribution would be payable but for section 10(8A) of the Contributions and Benefits Act;
- and in that subsection, in relation to such an issue, “the relevant person” means the person who is liable or alleged to be liable, or (as the case may be) who would be liable or who it is alleged would be liable, to pay the Class 1A contribution in question.
- (5) In proceedings for the determination of an issue to which this subsection applies—
- (a) in England and Wales, there shall be available to a witness (other than the relevant person) any privilege against self-incrimination or incrimination of a spouse which is available to a witness in legal proceedings; and
  - (b) in Scotland, section 3 of the Evidence (Scotland) Act 1853 (competence and compellability of witnesses) shall apply as it applies to civil proceedings except that the relevant person shall have no privilege against self-incrimination.
- (6) If it appears to a Commissioner that a matter before him involves a question of fact of special difficulty, he may direct that in dealing with that matter he shall have the assistance of one or more experts.
- In this subsection “expert” means a person appearing to the Commissioner to have knowledge or experience which would be relevant in determining the question of fact of special difficulty.
- (7) If it appears to the Chief Commissioner (or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for the purpose) that—
- (a) an application for leave under section 14(10)(b) above; or
  - (b) an appeal,
- falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the application or appeal be dealt with, not by that Commissioner alone, but by a tribunal consisting of any three or more of the Commissioners.
- If the decision of the tribunal is not unanimous, the decision of the majority shall be the decision of the tribunal; and the presiding Commissioner shall have a casting vote if the votes are equally divided.

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- (8) Where a direction is given under subsection (7)(a) above, section 14(10)(b) above shall have effect as if the reference to a Commissioner were a reference to such a tribunal as is mentioned in subsection (7) above.
- (9) Except so far as it may be applied in relation to England and Wales by procedure regulations, Part I of the Arbitration Act 1996 shall not apply to any proceedings under this Chapter.

## **17 Finality of decisions**

- (1) Subject to the provisions of this Chapter, any decision made in accordance with the foregoing provisions of this Chapter shall be final; and subject to the provisions of any regulations under section 11 above, any decision made in accordance with those regulations shall be final.
- (2) If and to the extent that regulations so provide, any finding of fact or other determination embodied in or necessary to such a decision, or on which such a decision is based, shall be conclusive for the purposes of—
  - (a) further such decisions;
  - (b) decisions made under the Child Support Act; and
  - (c) decisions made under the Vaccine Damage Payments Act.

## **18 Matters arising as respects decisions**

- (1) Regulations may make provision as respects matters arising—
  - (a) pending any decision under this Chapter of the Secretary of State, an appeal tribunal or a Commissioner which relates to—
    - (i) any claim for a relevant benefit;
    - (ii) any person's entitlement to such a benefit or its receipt;
    - (iii) statutory sick pay or statutory maternity pay; or
    - (iv) any person's liability for contributions; or
  - (b) out of the revision under section 9 above or on appeal of any such decision.
- (2) Regulations under subsection (1) above as it applies to child benefit may include provision as to the date from which child benefit is to be payable to a person in respect of a child in a case where, before the benefit was awarded to that person, child benefit in respect of the child was awarded to another person.

### *Medical examinations*

## **19 Medical examination required by Secretary of State**

- (1) Before making a decision on a claim for a relevant benefit, or as to a person's entitlement to such a benefit or to statutory sick pay or statutory maternity pay, the Secretary of State may refer the person—
  - (a) in respect of whom the claim is made; or
  - (b) whose entitlement is at issue,
 to a medical practitioner for such examination and report as appears to the Secretary of State to be necessary for the purpose of providing him with information for use in making the decision.

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- (2) Subsection (3) below applies where—
  - (a) the Secretary of State has exercised the power conferred on him by subsection (1) above; and
  - (b) the medical practitioner requests the person referred to him to attend for or submit himself to medical examination.
- (3) If the person fails without good cause to comply with the request, the Secretary of State shall make the decision against him.

## **20 Medical examination required by appeal tribunal**

- (1) This section applies where an appeal has been brought under section 12 above against a decision on a claim for a relevant benefit, or as to a person's entitlement to such a benefit or to statutory sick pay or statutory maternity pay.
- (2) An eligible person may, if prescribed conditions are satisfied, refer the person—
  - (a) in respect of whom the claim is made; or
  - (b) whose entitlement is at issue,to a medical practitioner for such examination and report as appears to the eligible person to be necessary for the purpose of providing an appeal tribunal with information for use in determining the appeal.

In this subsection “eligible person” means a person who is eligible to be appointed as the sole member of an appeal tribunal, or to be nominated as the chairman of such a tribunal.
- (3) At a hearing before an appeal tribunal, except in prescribed cases or circumstances, the tribunal—
  - (a) may not carry out a physical examination of the person mentioned in subsection (2) above; and
  - (b) may not require that person to undergo any physical test for the purpose of determining whether he satisfies the condition mentioned in section 73(1)(a) of the Contributions and Benefits Act.

### *Suspension and termination of benefit*

## **21 Suspension in prescribed circumstances**

- (1) Regulations may provide for—
  - (a) suspending payments of a relevant benefit, in whole or in part, in prescribed circumstances;
  - (b) the subsequent making in prescribed circumstances of any or all of the payments so suspended.
- (2) Regulations made under subsection (1) above may, in particular, make provision for any case where—
  - (a) it appears to the Secretary of State that an issue arises whether the conditions for entitlement to a relevant benefit are or were fulfilled;
  - (b) it appears to the Secretary of State that an issue arises whether a decision as to an award of a relevant benefit should be revised (under section 9 above) or superseded (under section 10 above);

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- (c) an appeal is pending against a decision of an appeal tribunal, a Commissioner or a court; or
  - (d) an appeal is pending against the decision given in a different case by a Commissioner or a court, and it appears to the Secretary of State that if the appeal were to be determined in a particular way an issue would arise whether the award of a relevant benefit (whether the same benefit or not) in the case itself ought to be revised or superseded.
- (3) For the purposes of subsection (2) above, an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, 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.
- (4) Any reference in this section or section 24 or 25 below to a relevant benefit includes a reference to statutory sick pay and statutory maternity pay.

## **22 Suspension for failure to furnish information etc**

- (1) The powers conferred by this section are exercisable in relation to persons who fail to comply with information requirements.
- (2) Regulations may provide for—
- (a) suspending payments of a relevant benefit, in whole or in part;
  - (b) the subsequent making in prescribed circumstances of any or all of the payments so suspended.
- (3) In this section and section 23 below “information requirement” means a requirement, made in pursuance of regulations under subsection (1)(hh) of section 5 of the Administration Act, to furnish information or evidence needed for a determination whether a decision on an award of benefit to which that section applies should be revised under section 9 or superseded under section 10 above.

## **23 Termination in cases of failure to furnish information**

Regulations may provide that, except in prescribed cases or circumstances, a person—

- (a) whose benefit has been suspended in accordance with regulations under section 21 above and who subsequently fails to comply with an information requirement; or
- (b) whose benefit has been suspended in accordance with regulations under section 22 above for failing to comply with such a requirement,

shall cease to be entitled to the benefit from a date not earlier than the date on which payments were suspended.

## **24 Suspension and termination for failure to submit to medical examination**

Regulations may make provision—

- (a) enabling the Secretary of State to require a person to whom a relevant benefit has been awarded to submit to medical examination;

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- (b) for suspending payments of benefit, in whole or in part, in a case of a person who fails to submit himself to a medical examination to which he is required to submit in accordance with regulations under paragraph (a) above;
- (c) for the subsequent making in prescribed circumstances of any or all of the payments so suspended;
- (d) for entitlement to the benefit to cease, except in prescribed cases or circumstances, from a date not earlier than the date on which payments were suspended.

*Decisions and appeals dependent on other cases*

**25 Decisions involving issues that arise on appeal in other cases**

- (1) This section applies where—
  - (a) a decision by the Secretary of State falls to be made under section 8, 9 or 10 above in relation to a particular case; and
  - (b) an appeal is pending against the decision given in another case by a Commissioner or a court (whether or not the two cases concern the same benefit).
- (2) In a case relating to a relevant benefit, the Secretary of State need not make the decision while the appeal is pending if he considers it possible that the result of the appeal will be such that, if it were already determined, there would be no entitlement to benefit.
- (3) If the Secretary of State considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some other way—
  - (a) he need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
  - (b) he may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.
- (4) Where the Secretary of State acts in accordance with subsection (3)(b) above, following the determination of the appeal he shall if appropriate revise his decision (under section 9 above) in accordance with that determination.
- (5) For the purposes of this section, an appeal against a decision is pending if—
  - (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, 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.
- (6) In paragraphs (a), (b) and (c) of subsection (5) above, any reference to an appeal, or an application for leave to appeal, against a decision includes a reference to—
  - (a) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
  - (b) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.

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## **26 Appeals involving issues that arise on appeal in other cases**

- (1) This section applies where—
  - (a) an appeal (“appeal A”) in relation to a decision under section 8, 9 or 10 above is made to an appeal tribunal, or from an appeal tribunal to a Commissioner; and
  - (b) an appeal (“appeal B”) is pending against a decision given in a different case by a Commissioner or a court (whether or not the two appeals concern the same benefit).
- (2) If the Secretary of State considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, he may serve notice requiring the tribunal or Commissioner—
  - (a) not to determine appeal A but to refer it to him; or
  - (b) to deal with the appeal in accordance with subsection (4) below.
- (3) Where appeal A is referred to the Secretary of State under subsection (2)(a) above, following the determination of appeal B and in accordance with that determination, he shall if appropriate—
  - (a) in a case where appeal A has not been determined by the tribunal, revise (under section 9 above) his decision which gave rise to that appeal; or
  - (b) in a case where appeal A has been determined by the tribunal, make a decision (under section 10 above) superseding the tribunal’s decision.
- (4) Where appeal A is to be dealt with in accordance with this subsection, the appeal tribunal or Commissioner shall either—
  - (a) stay appeal A until appeal B is determined; or
  - (b) if the tribunal or Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—
    - (i) appeal B had already been determined; and
    - (ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.

In this subsection “the appellant” means the person who appealed or, as the case may be, first appealed against the decision mentioned in subsection (1)(a) above.
- (5) Where the appeal tribunal or Commissioner acts in accordance with subsection (4)(b) above, following the determination of appeal B the Secretary of State shall, if appropriate, make a decision (under section 10 above) superseding the decision of the tribunal or Commissioner in accordance with that determination.
- (6) For the purposes of this section, an appeal against a decision is pending if—
  - (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, 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.
- (7) In this section—



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- (a) the reference in subsection (1)(a) above to an appeal to a Commissioner includes a reference to an application for leave to appeal to a Commissioner; and
  - (b) any reference in paragraph (a), (b) or (c) of subsection (6) above to an appeal, or to an application for leave to appeal, against a decision includes a reference to—
    - (i) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
    - (ii) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.
- (8) Regulations may make provision supplementing that made by this section.

### *Cases of error*

## **27 Restrictions on entitlement to benefit in certain cases of error**

- (1) Subject to subsection (2) below, this section applies where—
- (a) the effect of the determination, whenever made, of an appeal to a Commissioner or the court (“the relevant determination”) is that the adjudicating authority’s decision out of which the appeal arose was erroneous in point of law; and
  - (b) after the date of the relevant determination a decision falls to be made by the Secretary of State in accordance with that determination (or would, apart from this section, fall to be so made)—
    - (i) in relation to a claim for benefit;
    - (ii) as to whether to revise, under section 9 above, a decision as to a person’s entitlement to benefit; or
    - (iii) on an application made under section 10 above for a decision as to a person’s entitlement to benefit to be superseded.
- (2) This section does not apply where the decision of the Secretary of State mentioned in subsection (1)(b) above—
- (a) is one which, but for section 25(2) or (3)(a) above, would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of section 26(3) or (5) above.
- (3) In so far as the decision relates to a person’s entitlement to a benefit in respect of—
- (a) a period before the date of the relevant determination; or
  - (b) in the case of a widow’s payment, a death occurring before that date,
- it shall be made as if the adjudicating authority’s decision had been found by the Commissioner or court not to have been erroneous in point of law.
- (4) In deciding whether a person is entitled to benefit in a case where his entitlement depends on his having been entitled to the same or some other benefit before attaining a particular age, subsection (3) above shall be disregarded for the purpose only of deciding whether he was so entitled before attaining that age.
- (5) Subsection (1)(a) above shall be read as including a case where—
- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and

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- (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (6) It is immaterial for the purposes of subsection (1) above—
- (a) where such a decision as is mentioned in paragraph (b)(i) falls to be made, whether the claim was made before or after the date of the relevant determination;
- (b) where such a decision as is mentioned in paragraph (b)(ii) or (iii) falls to be made on an application under section 9 or (as the case may be) 10 above, whether the application was made before or after that date.
- (7) In this section—
- “adjudicating authority” means—
- (a) the Secretary of State;
- (b) any former officer, tribunal or body; or
- (c) any officer, tribunal or body in Northern Ireland corresponding to a former officer, tribunal or body;
- “benefit” means—
- (a) benefit under Parts II to V of the Contributions and Benefits Act, other than Old Cases payments;
- (b) benefit under Part II of the Social Security Act 1975 (in respect of a period before 1st July 1992 but not before 6th April 1975);
- (c) benefit under the National Insurance Act 1946 or 1965, or the National Insurance (Industrial Injuries) Act 1946 or 1965 (in respect of a period before 6th April 1975);
- (d) a jobseeker’s allowance;
- (e) any benefit corresponding to a benefit mentioned in paragraphs (a) to (d) above; and
- (f) any income-related benefit;
- “the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community;
- “former officer, tribunal or body” means any of the following, that is to say—
- (a) an adjudication officer or, in the case of a decision given on a reference under section 21(2) or 25(1) of the Administration Act, a social security appeal tribunal, a disability appeal tribunal or a medical appeal tribunal;
- (b) an adjudicating medical practitioner appointed under section 49 of that Act or a specially qualified adjudicating medical practitioner appointed in accordance with regulations under section 62(2) of that Act; or
- (c) the National Assistance Board, the Supplementary Benefits Commission, the Attendance Allowance Board, a benefit officer, an insurance officer or a supplement officer.
- (8) For the purposes of this section, any reference to entitlement to benefit includes a reference to entitlement—
- (a) to any increase in the rate of a benefit; or
- (b) to a benefit, or increase of benefit, at a particular rate.
- (9) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this section in accordance with any regulations made for that purpose.

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- (10) Regulations made under subsection (9) above may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Commissioner; or
  - (b) for a determination of a lower court or a Commissioner to be treated as if it had been made on the date of a determination of a higher court.

## **28 Correction of errors and setting aside of decisions**

- (1) Regulations may make provision with respect to—
- (a) the correction of accidental errors in any decision or record of a decision made under any relevant enactment; and
  - (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
    - (i) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party’s representative or was not received at an appropriate time by the body or person who gave the decision; or
    - (ii) a party to the proceedings or a party’s representative was not present at a hearing related to the proceedings.
- (2) Nothing in subsection (1) above shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that subsection.
- (3) In this section “relevant enactment” means any enactment contained in—
- (a) this Chapter;
  - (b) the Contributions and Benefits Act;
  - (c) the Pension Schemes Act 1993;
  - (d) the Jobseekers Act; or
  - (e) the Social Security (Recovery of Benefits) Act 1997.

### *Industrial accidents*

## **29 Decision that accident is an industrial accident**

- (1) Where, in connection with any claim for industrial injuries benefit, it is decided that the relevant accident was or was not an industrial accident—
- (a) an express declaration of that fact shall be made and recorded; and
  - (b) subject to subsection (3) below, a claimant shall be entitled to have the issue whether the relevant accident was an industrial accident decided notwithstanding that his claim is disallowed on other grounds.
- (2) Subject to subsection (3) and section 30 below, any person suffering personal injury by accident shall be entitled, if he claims the accident was an industrial accident—
- (a) to have that issue decided; and
  - (b) to have a declaration made and recorded accordingly,
- notwithstanding that no claim for benefit has been made in connection with which the issue arises; and this Chapter shall apply for that purpose as if the issue had arisen in connection with a claim for benefit.

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- (3) The Secretary of State, an appeal tribunal or a Commissioner (as the case may be) may refuse to decide the issue whether an accident was an industrial accident if satisfied that it is unlikely to be necessary to decide the issue for the purposes of any claim for benefit; and this Chapter shall apply as if any such refusal were a decision on the issue.
- (4) Subject to sections 9 to 15 above, any declaration under this section that an accident was or was not an industrial accident shall be conclusive for the purposes of any claim for industrial injuries benefit in respect of that accident.
- (5) Where subsection (4) above applies—
  - (a) in relation to a death occurring before 11th April 1988; or
  - (b) for the purposes of section 60(2) of the Contributions and Benefits Act,it shall have effect as if at the end there were added the words “whether or not the claimant is the person at whose instance the declaration was made”.
- (6) For the purposes of this section (but subject to section 30 below), an accident whereby a person suffers personal injury shall be deemed, in relation to him, to be an industrial accident if—
  - (a) it arises out of and in the course of his employment;
  - (b) that employment is employed earner’s employment for the purposes of Part V of the Contributions and Benefits Act; and
  - (c) payment of benefit is not under section 94(5) of that Act precluded because the accident happened while he was outside Great Britain.
- (7) A decision under this section shall be final except that sections 9 and 10 above apply to a decision under this section that an accident was or was not an industrial accident as they apply to a decision under section 8 above if, but only if, the Secretary of State is satisfied that the decision under this section was given in consequence of any wilful non-disclosure or misrepresentation of a material fact.

### **30 Effect of decision**

- (1) A decision (given under subsection (2) of section 29 above or otherwise) that an accident was an industrial accident is to be taken as determining only that paragraphs (a), (b) and (c) of subsection (6) of that section are satisfied in relation to the accident.
- (2) Subject to subsections (3) and (4) below, no such decision is to be taken as importing a decision as to the origin of any injury or disability suffered by the claimant, whether or not there is an event identifiable as an accident apart from any injury that may have been received.
- (3) A decision that, on a particular occasion when there was no event so identifiable, a person had an industrial accident by reason of an injury shall be treated as a decision that, if the injury was suffered by accident on that occasion, the accident was an industrial accident.
- (4) A decision that an accident was an industrial accident may be given, and a declaration to that effect be made and recorded in accordance with section 29 above, without its having been found that personal injury resulted from the accident.
- (5) Subsection (4) above has effect subject to the discretion under section 29(3) above to refuse to decide the issue if it is unlikely to be necessary for the purposes of a claim for benefit.

*Other special cases*

**31 Incapacity for work**

- (1) Regulations may provide that a determination that a person is disqualified for any period in accordance with regulations under section 171E of the Contributions and Benefits Act shall have effect for such purposes as may be prescribed as a determination that he is to be treated as capable of work for that period, and vice versa.
- (2) Provision may be made by regulations for matters of such descriptions as may be prescribed to be determined by the Secretary of State, notwithstanding that other matters fall to be determined by another authority.
- (3) Nothing in this section shall be taken to prejudice the generality of the power conferred by section 17(2) above.

**32 Industrial diseases**

Regulations shall provide for applying the provisions of this Chapter, subject to any prescribed additions or modifications, in relation to decisions made or falling to be made under sections 108 to 110 of the Contributions and Benefits Act.

**33 Christmas bonus**

- (1) A decision by the Secretary of State that a person is entitled or not entitled to payment of a qualifying benefit in respect of a period which includes a day in the relevant week shall be conclusive for the purposes of section 148 of the Contributions and Benefits Act.
- (2) In this section, expressions to which a meaning is assigned by section 150 of that Act have that meaning.

*Housing benefit and council tax benefit*

**34 Determination of claims and reviews**

- (1) Regulations shall provide that, where a person claims—
  - (a) housing benefit; or
  - (b) council tax benefit,the authority to whom the claim is made shall notify the person of its determination of the claim.
- (2) Any such notification shall be given in such form as may be prescribed.
- (3) Regulations may make provision requiring authorities to whom claims for housing benefit or council tax benefit are made by, or in respect of, persons who have been entitled to a jobseeker's allowance or to income support to give priority, in prescribed circumstances, to those claims over other claims for any such benefit.
- (4) Regulations shall make provision for reviews of determinations relating to housing benefit or council tax benefit.

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- (5) Regulations may make provision as respects matters arising out of the revision on review of such determinations.

### **35 Suspension of benefit in prescribed circumstances**

- (1) Regulations may provide for—
- (a) suspending in prescribed circumstances, in whole or in part—
    - (i) payments of housing benefit or council tax benefit; or
    - (ii) any right (exercisable by way of council tax benefit) to make a reduction in the amount that a person is or becomes liable to pay in respect of council tax;
  - (b) the subsequent making, or restoring, in prescribed circumstances of any or all of the payments, or any right, so suspended.
- (2) Regulations made under subsection (1) above may, in particular, make provision for any case where, in relation to a claim for housing benefit or council tax benefit—
- (a) it appears to the authority that an issue arises whether the conditions for entitlement to the benefit are or were fulfilled;
  - (b) it appears to the authority that an issue arises whether the determination of the claim should be reviewed in accordance with regulations made under section 34(4) above;
  - (c) an appeal is pending to a court in relation to the determination of the claim; or
  - (d) an appeal is pending to a court in relation to the determination (whether made by the authority or by any other authority) of a different claim for housing benefit or council tax benefit, and it appears to the authority that if the appeal were to be determined in a particular way an issue would arise whether the determination of the claim ought to be reviewed.
- (3) For the purposes of subsection (2) above, an appeal is pending to a court in England and Wales in relation to a determination if—
- (a) an application, or a renewed application, for leave to apply for judicial review of the determination has been made but not determined;
  - (b) such leave has been granted but the application for judicial review has not been determined;
  - (c) an appeal has been brought (or an application has been made for leave to appeal) against an order made on a judicial review of the determination, and the appeal (or application) has not been determined; or
  - (d) in such circumstances as may be prescribed, the time for making an application or appeal such as is mentioned in paragraph (a) or (c) above has not yet expired.
- (4) For the purposes of subsection (2) above, an appeal is pending to a court in Scotland in relation to a determination if—
- (a) an application to the supervisory jurisdiction of the Court of Session has been made in respect of the determination and the application has not been determined;
  - (b) an appeal has been brought against an order made on such an application and the appeal has not been determined;
  - (c) in such circumstances as may be prescribed, an application such as is mentioned in paragraph (a) above has not been made in respect of the

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- determination and a period prescribed for the purposes of this section for making such an application has not expired; or
- (d) in such circumstances as may be prescribed, the time for making an appeal such as is mentioned in paragraph (b) above has not yet expired.

### *Social fund payments*

## **36 Appropriate officers**

- (1) In this section and section 38 below, “appropriate officer” means an officer of the Secretary of State who, acting under his authority, is exercising functions of the Secretary of State in relation to such payments out of the social fund as are mentioned in section 138(1)(b) of the Contributions and Benefits Act.
- (2) The Secretary of State may nominate for an area an appropriate officer who shall issue general guidance to other such officers in the area about such matters relating to the social fund as the Secretary of State may specify.
- (3) In relation to any decision of an appropriate officer, section 38 below shall apply in substitution for sections 9 and 10 above.

## **37 The social fund Commissioner and inspectors**

- (1) There shall continue to be an officer known as “the social fund Commissioner”.
- (2) The social fund Commissioner shall be appointed by the Secretary of State.
- (3) The social fund Commissioner—
- (a) shall appoint such social fund inspectors; and
  - (b) may appoint such officers and staff for himself and for social fund inspectors, as he thinks fit, but with the consent of the Secretary of State as to numbers.
- (4) Appointments under subsection (3) above shall be made from persons made available to the social fund Commissioner by the Secretary of State.
- (5) It shall be the duty of the social fund Commissioner—
- (a) to monitor the quality of decisions of social fund inspectors and give them such advice and assistance as he thinks fit to improve the standard of their decisions;
  - (b) to arrange such training of social fund inspectors as he considers appropriate; and
  - (c) to carry out such other functions in connection with the work of social fund inspectors as the Secretary of State may direct.
- (6) The social fund Commissioner shall report annually in writing to the Secretary of State on the standards of reviews by social fund inspectors, and the Secretary of State shall publish his report.

## **38 Reviews of determinations**

- (1) An appropriate officer—
- (a) shall review a social fund determination, if an application for a review is made, within such time and in such form and manner as may be prescribed, by or on

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- behalf of the person who applied for the payment to which the determination relates;
- (b) may review such a determination on the ground that the person who applied for the payment to which the determination relates misrepresented, or failed to disclose, any material fact; and
  - (c) may review such a determination in such other circumstances as he thinks fit.
- (2) The power to review a social fund determination conferred by subsection (1) above includes power to review a determination made on a previous review.
- (3) A social fund determination which has been reviewed under subsection (1) above shall be further reviewed by a social fund inspector if an application is made, within such time and in such form and manner as may be prescribed, by or on behalf of the person who applied for the payment to which the determination relates.
- (4) On a review under subsection (3) above a social fund inspector shall have the following powers—
- (a) power to confirm the determination made by the appropriate officer;
  - (b) power to make any determination which an appropriate officer could have made;
  - (c) power to refer the matter to such an officer for determination.
- (5) A social fund inspector may review a determination under subsection (3) above made by himself or some other social fund inspector.
- (6) In making a determination on a review an appropriate officer or a social fund inspector need not consider—
- (a) in the case of a determination on a review under subsection (1)(a) above, any issue that is not raised by the application;
  - (b) in the case of a determination on a review under subsection (1)(b) above, any issue that is not raised by the material fact;
  - (c) in the case of a determination on a review under subsection (1)(c) above, any issue that did not cause him to carry out the review.
- (7) In making a determination on a review under subsection (1)(a) or (c) above an appropriate officer or a social fund inspector shall—
- (a) subject to paragraphs (b) and (c) below, have regard to whichever of the following are applicable, namely—
    - (i) all the circumstances of the case and, in particular, the criteria specified in paragraphs (a) to (e) of subsection (1) of section 140 of the Contributions and Benefits Act;
    - (ii) the criteria mentioned in paragraphs (a) and (b) of subsection (1A) of that section; and
    - (iii) the criterion specified in directions issued by the Secretary of State under that subsection and the criteria mentioned in paragraph (b) of that subsection;
  - (b) act in accordance with any general directions issued by the Secretary of State under subsection (2) of that section, and any general directions issued by him with regard to reviews; and
  - (c) take account of any general guidance issued by the Secretary of State under that subsection or with regard to reviews.



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- (8) In making a determination on a review under subsection (1)(b) above an appropriate officer or a social fund inspector shall—
- (a) act in accordance with any general directions issued by the Secretary of State; and
  - (b) take account of any general guidance issued by the Secretary of State.
- (9) Any reference in subsection (6), (7) or (8) above to a determination on a review under a particular provision of subsection (1) above shall be construed, in relation to a social fund inspector, as a reference to a determination on a further review of a determination which has been reviewed under that provision.
- (10) Directions under this section may specify—
- (a) the circumstances in which a social fund determination is to be reviewed; and
  - (b) the manner in which a review is to be conducted.
- (11) In making a determination on a review under subsection (1)(a) or (c) above an appropriate officer shall take account (subject to any directions or guidance issued by the Secretary of State under this section) of any guidance issued by the appropriate officer nominated for his area under section 36(2) above.
- (12) A social fund inspector reviewing a social fund determination which has been reviewed under subsection (1)(a) or (c) above shall be under the same duties in relation to such guidance as the appropriate officer or social fund inspector who made the determination.
- (13) In this section “social fund determination” means a determination made under the Contributions and Benefits Act by an appropriate officer.

### *Supplemental*

## **39 Interpretation etc. of Chapter II**

- (1) In this Chapter—
- “appeal tribunal” means an appeal tribunal constituted under Chapter I of this Part;
  - “Commissioner” means the Chief Social Security Commissioner or any other Social Security Commissioner, and includes a tribunal of three or more Commissioners constituted under section 16(7) above;
  - “relevant benefit” has the meaning given by section 8(3) above.
- (2) Expressions used in this Chapter to which a meaning is assigned by section 191 of the Administration Act have that meaning in this Chapter.
- (3) Part II of the Administration Act, which is superseded by the foregoing provisions of this Chapter, shall cease to have effect.

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## CHAPTER III

### OTHER DECISIONS AND APPEALS

#### *Child support*

#### **40 Child support: revision of decisions**

For section 16 of the Child Support Act there shall be substituted the following section—

##### **“16 Revision of decisions**

- (1) Any decision of the Secretary of State under section 11, 12 or 17 may be revised by the Secretary of State—
  - (a) either within the prescribed period or in prescribed cases or circumstances; and
  - (b) either on an application made for the purpose or on his own initiative; and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised.
- (2) In making a decision under subsection (1), the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.
- (3) Subject to subsections (4) and (5) and section 28ZC, a revision under this section shall take effect as from the date on which the original decision took (or was to take) effect.
- (4) Regulations may provide that, in prescribed cases or circumstances, a revision under this section shall take effect as from such other date as may be prescribed.
- (5) Where a decision is revised under this section, for the purpose of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.
- (6) Except in prescribed circumstances, an appeal against a decision of the Secretary of State shall lapse if the decision is revised under this section before the appeal is determined.”

#### **41 Child support: decisions superseding earlier decisions**

For sections 17 to 19 of the Child Support Act there shall be substituted the following section—

##### **“17 Decisions superseding earlier decisions**

- (1) Subject to subsection (2), the following, namely—
  - (a) any decision of the Secretary of State under section 11 or 12 or this section, whether as originally made or as revised under section 16;
  - (b) any decision of an appeal tribunal under section 20; and

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- (c) any decision of a Child Support Commissioner on an appeal from such a decision as is mentioned in paragraph (b),  
may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on his own initiative.
- (2) In making a decision under subsection (1), the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.
- (3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this section.
- (4) Subject to subsection (5) and section 28ZC, a decision under this section shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.
- (5) Regulations may provide that, in prescribed cases or circumstances, a decision under this section shall take effect as from such other date as may be prescribed.”

#### **42 Child support: appeals to appeal tribunals**

For sections 20 to 21 of the Child Support Act there shall be substituted the following section—

##### **“20 Appeals to appeal tribunals**

- (1) Where an application for a maintenance assessment is refused, the person who made that application shall have a right of appeal to an appeal tribunal against the refusal.
- (2) Where a maintenance assessment is in force—
- (a) the absent parent or person with care with respect to whom it was made; or
  - (b) where the application for the assessment was made under section 7, either of them or the child concerned,
- shall have a right of appeal to an appeal tribunal against the amount of the assessment or the date from which the assessment takes effect.
- (3) Where a maintenance assessment is cancelled, or an application for the cancellation of a maintenance assessment is refused—
- (a) the absent parent or person with care with respect to whom the maintenance assessment in question was, or remains, in force; or
  - (b) where the application for that assessment was made under section 7, either of them or the child concerned,
- shall have a right of appeal to an appeal tribunal against the cancellation or refusal.
- (4) A person with a right of appeal under this section shall be given such notice of that right and, in the case of a right conferred by subsection (1) or (3), such notice of the decision as may be prescribed.
- (5) Regulations may make—

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- (a) provision as to the manner in which, and the time within which, appeals are to be brought; and
  - (b) such provision with respect to proceedings before appeal tribunals as the Secretary of State considers appropriate.
- (6) The regulations may in particular make any provision of a kind mentioned in Schedule 5 to the Social Security Act 1998.
- (7) In deciding an appeal under this section, an appeal tribunal—
- (a) need not consider any issue that is not raised by the appeal; and
  - (b) shall not take into account any circumstances not obtaining at the time when the decision or assessment appealed against was made.”

#### **43 Child support: decisions and appeals dependent on other cases**

After section 28 of the Child Support Act there shall be inserted the following sections—

*“Decisions and appeals dependent on other cases*

##### **28ZA Decisions involving issues that arise on appeal in other cases**

- (1) This section applies where—
- (a) a decision by the Secretary of State falls to be made under section 11, 12, 16 or 17 in relation to a maintenance assessment; and
  - (b) an appeal is pending against a decision given in relation to a different maintenance assessment by a Child Support Commissioner or a court.
- (2) If the Secretary of State considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some way—
- (a) he need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
  - (b) he may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.
- (3) Where the Secretary of State acts in accordance with subsection (2)(b), following the determination of the appeal he shall if appropriate revise his decision (under section 16) in accordance with that determination.
- (4) For the purposes of this section, an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, 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.
- (5) In paragraphs (a), (b) and (c) of subsection (4), any reference to an appeal, or an application for leave to appeal, against a decision includes a reference to—

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- (a) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
- (b) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.

### **28ZB Appeals involving issues that arise on appeal in other cases**

- (1) This section applies where—
  - (a) an appeal (“appeal A”) in relation to a decision falling within section 20(1) or (3), or an assessment falling within section 20(2), is made to an appeal tribunal, or from an appeal tribunal to a Child Support Commissioner; and
  - (b) an appeal (“appeal B”) is pending against a decision given in a different case by a Child Support Commissioner or a court.
- (2) If the Secretary of State considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, he may serve notice requiring the tribunal or Child Support Commissioner—
  - (a) not to determine appeal A but to refer it to him; or
  - (b) to deal with the appeal in accordance with subsection (4).
- (3) Where appeal A is referred to the Secretary of State under subsection (2)
  - (a), following the determination of appeal B and in accordance with that determination, he shall if appropriate—
    - (a) in a case where appeal A has not been determined by the tribunal, revise (under section 16) his decision which gave rise to that appeal; or
    - (b) in a case where appeal A has been determined by the tribunal, make a decision (under section 17) superseding the tribunal’s decision.
- (4) Where appeal A is to be dealt with in accordance with this subsection, the appeal tribunal or Child Support Commissioner shall either—
  - (a) stay appeal A until appeal B is determined; or
  - (b) if the tribunal or Child Support Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—
    - (i) appeal B had already been determined; and
    - (ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.

In this subsection “the appellant” means the person who appealed or, as the case may be, first appealed against the decision or assessment mentioned in subsection (1)(a).
- (5) Where the appeal tribunal or Child Support Commissioner acts in accordance with subsection (4)(b), following the determination of appeal B the Secretary of State shall, if appropriate, make a decision (under section 17) superseding the decision of the tribunal or Child Support Commissioner in accordance with that determination.
- (6) For the purposes of this section, an appeal against a decision is pending if—
  - (a) an appeal against the decision has been brought but not determined;

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- (b) an application for leave to appeal against the decision has been made but not determined; or
- (c) in such circumstances as may be prescribed, 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.

(7) In this section—

- (a) the reference in subsection (1)(a) to an appeal to a Child Support Commissioner includes a reference to an application for leave to appeal to a Child Support Commissioner; and
- (b) any reference in paragraph (a), (b) or (c) of subsection (6) to an appeal, or to an application for leave to appeal, against a decision includes a reference to—
  - (i) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
  - (ii) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.

(8) Regulations may make provision supplementing that made by this section.”

#### **44 Child support: cases of error**

After section 28ZB of the Child Support Act there shall be inserted the following sections—

*“Cases of error*

##### **28ZC Restrictions on liability in certain cases of error**

- (1) Subject to subsection (2), this section applies where—
  - (a) the effect of the determination, whenever made, of an appeal to a Child Support Commissioner or the court (“the relevant determination”) is that the adjudicating authority’s decision out of which the appeal arose was erroneous in point of law; and
  - (b) after the date of the relevant determination a decision falls to be made by the Secretary of State in accordance with that determination (or would, apart from this section, fall to be so made)—
    - (i) with respect to an application for a maintenance assessment (made after the commencement date);
    - (ii) as to whether to revise, under section 16, a decision (made after the commencement date) with respect to such an assessment; or
    - (iii) on an application under section 17 (made after the commencement date) for a decision with respect to such an assessment to be superseded.
- (2) This section does not apply where the decision of the Secretary of State mentioned in subsection (1)(b)—

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- (a) is one which, but for section 28ZA(2)(a), would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of section 28ZB(3) or (5).
- (3) In so far as the decision relates to a person’s liability in respect of a period before the date of the relevant determination, it shall be made as if the adjudicating authority’s decision had been found by the Commissioner or court not to have been erroneous in point of law.
- (4) Subsection (1)(a) shall be read as including a case where—
- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
  - (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (5) It is immaterial for the purposes of subsection (1)—
- (a) where such a decision as is mentioned in paragraph (b)(i) falls to be made; or
  - (b) where such a decision as is mentioned in paragraph (b)(ii) or (iii) falls to be made on an application under section 16 or (as the case may be) section 17,
- whether the application was made before or after the date of the relevant determination.
- (6) In this section—
- “adjudicating authority” means the Secretary of State, or a child support officer;
  - “the commencement date” means the date of the coming into force of section 44 of the Social Security Act 1998; and
  - “the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community.
- (7) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this section in accordance with any regulations made for that purpose.
- (8) Regulations made under subsection (7) may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Child Support Commissioner; or
  - (b) for a determination of a lower court or a Child Support Commissioner to be treated as if it had been made on the date of a determination of a higher court.

### **28ZD Correction of errors and setting aside of decisions**

- (1) Regulations may make provision with respect to—
- (a) the correction of accidental errors in any decision or record of a decision given under this Act; and

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- (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
  - (i) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party’s representative or was not received at an appropriate time by the body or person who gave the decision; or
  - (ii) a party to the proceedings or a party’s representative was not present at a hearing related to the proceedings.
- (2) Nothing in subsection (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that subsection.”

*Vaccine damage payments*

**45 Vaccine damage payments: decisions reversing earlier decisions**

After section 3 of the Vaccine Damage Payments Act there shall be inserted the following section—

**“3A Decisions reversing earlier decisions**

- (1) Subject to subsection (2) below, any decision of the Secretary of State under section 3 above or this section, and any decision of an appeal tribunal under section 4 below, may be reversed by a decision made by the Secretary of State—
  - (a) either within the prescribed period or in prescribed cases or circumstances; and
  - (b) either on an application made for the purpose or on his own initiative.
- (2) In making a decision under subsection (1) above, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.
- (3) Regulations may prescribe the procedure by which a decision may be made under this section.
- (4) Such notice as may be prescribed by regulations shall be given of a decision under this section.
- (5) Except as provided by section 5(4) below, no payment under section 1(1) above shall be recoverable by virtue of a decision under this section.
- (6) In this section and sections 4 and 8 below “appeal tribunal” means an appeal tribunal constituted under Chapter I of Part I of the Social Security Act 1998.”

**46 Vaccine damage payments: appeals to appeal tribunals**

For section 4 of the Vaccine Damage Payments Act there shall be substituted the following section—



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#### **“4 Appeals to appeal tribunals**

- (1) The claimant may appeal to an appeal tribunal against any decision of the Secretary of State under section 3 or 3A above.
- (2) Regulations may make—
  - (a) provision as to the manner in which, and the time within which, appeals are to be brought; and
  - (b) such provision with respect to proceedings before appeal tribunals as the Secretary of State considers appropriate.
- (3) The regulations may in particular make any provision of a kind mentioned in Schedule 5 to the Social Security Act 1998.
- (4) In deciding an appeal under this section, an appeal tribunal shall consider all the circumstances of the case (including any not obtaining at the time when the decision appealed against was made).”

#### **47 Vaccine damage payments: correction of errors etc**

After section 7 of the Vaccine Damage Payments Act there shall be inserted the following section—

##### **“7A Correction of errors and setting aside of decisions**

- (1) Regulations may make provision with respect to—
  - (a) the correction of accidental errors in any decision or record of a decision under section 3, 3A or 4 of this Act; and
  - (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
    - (i) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party’s representative or was not received at an appropriate time by the body or person who gave the decision; or
    - (ii) a party to the proceedings or a party’s representative was not present at a hearing related to the proceedings.
- (2) Nothing in subsection (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that subsection.”