
STATUTORY INSTRUMENTS

1991 No. 2889

SOCIAL SECURITY

**The Social Security (Adjudication)
Amendment (No. 3) Regulations 1991**

Made - - - - 18th December 1991

Coming into force in accordance with regulation 1(2)

Whereas a draft of this instrument was laid before Parliament in accordance with section 12(1) of the Disability Living Allowance and Disability Working Allowance Act 1991⁽¹⁾ and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 100A(1) and (5), 100B(3), 100D(1)(a) and (2), 101(5B), 105, 106, 114, 115, 115D(1), 119(3) and (4) and 166(2) and (3) of, and Schedules 13 and 20 to, the Social Security Act 1975⁽²⁾, and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971⁽³⁾, by this instrument, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Adjudication) Amendment (No.3) Regulations 1991.

(2) These Regulations shall come into force as follows—

(a) regulations 2 and 13 except insofar as they relate to the Attendance Allowance Board and attendance allowance, and regulations 3 to 10, 14, 15 and 16 and this regulation, on 3rd February 1992; and

(b) regulations 2, 12 and 13 so far as not already in force and regulation 11, on 6th April 1992.

(3) In these Regulations “the Adjudication Regulations” means the Social Security (Adjudication) Regulations 1986⁽⁴⁾.

(1) 1991 c. 21

(2) 1975 c. 14. Sections 100A, 100B, 100D, and 115D were inserted by paragraph 5 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance Act 1991 (“the 1991 Act”) and applied to disability working allowance by paragraph 3 of Schedule 3 to the 1991 Act. Section 115(2) was amended by paragraph 10 of Schedule 1 to the 1991 Act and Schedule 13 was amended by paragraph 17 of Schedule 1 to that Act. Schedule 20 is cited for the meaning it ascribes to “prescribe” and “regulations”.

(3) 1971 c. 62. See section 10(2) and paragraph 19 of Schedule 3 to the Social Security Act 1980 (c. 30).

(4) S.I. 1986/2218; relevant amending instruments are S.I. 1987/1970, 1990/603 and 1991/2284.

Amendment of regulation 1 of the Adjudication Regulations

2. In regulation 1 of the Adjudication Regulations (interpretation)—
- (a) in paragraph (2)—
- (i) after the definition of the “the 1986 Act” there shall be added the following definition—
- ““the 1991 Act” means the Disability Living Allowance and Disability Working Allowance Act 1991(5);”;
- (ii) in the definition of “adjudicating authority” after the words “medical appeal tribunal,” there shall be added the words “a disability appeal tribunal,” and the words “the Attendance Allowance Board” shall be omitted;
- (iii) the definition of “the Attendance Allowance Board” shall be omitted;
- (iv) after the definition of “Commissioner” there shall be inserted the following definitions—
- ““disability appeal tribunal” means a tribunal constituted in accordance with Schedule 10A to the 1975 Act(6);
- “disability question” has the meaning assigned by regulation 26C(2);”
- (v) in the definition of “full-time chairman”, after the words “chairman of appeal tribunals” there shall be inserted the words “, disability appeal tribunals”(7).
- (vi) in the definition of “party to the proceedings”, in paragraph (b), after the words “appeal tribunal” there shall be inserted the words “or a disability appeal tribunal”;
- (vii) in the definition of “President”, after the words “social security appeal tribunals” there shall be inserted the words “, disability appeal tribunals”; and
- (b) paragraph (4) shall be omitted.

Amendment of regulation 2 of the Adjudication Regulations

3. In paragraphs (2) and (3) of regulation 2 of the Adjudication Regulations (procedure in connection with determinations; and right to representation), for the words “or a medical appeal tribunal” there shall be substituted the words “a medical appeal tribunal or a disability appeal tribunal.”

Amendment of regulation 3 of the Adjudication Regulations

4. In paragraphs (3) and (7) of regulation 3 of the Adjudication Regulations (manner of making applications, appeals or references; and time limits)(8), for the words “or a medical appeal tribunal” there shall be substituted the words “, a medical appeal tribunal or a disability appeal tribunal”.

Amendment of regulation 4 of the Adjudication Regulations

5. In regulation 4 of the Adjudication Regulations (oral hearings and inquiries)—
- (a) in paragraph (6)(b), for the words “or a medical appeal tribunal, or as a clerk to either of such tribunals” there shall be substituted the words “,a medical appeal tribunal or a disability appeal tribunal, or as a clerk to any such tribunal”; and

(5) 1991 c. 21.

(6) Schedule 10A was inserted by paragraph 16 of Schedule 1 to the 1991 Act.

(7) See paragraph 1A(1) of Schedule 10 to the 1975 Act which was substituted by paragraph 15 of Schedule 1 to the 1991 Act.

(8) Paragraph (7) was added to regulation 3 by S.I. 1990/603.

- (b) in paragraph (6)(c), for the words “or medical appeal tribunals” there shall be substituted the words “, medical appeal tribunals or disability appeal tribunals”.

Amendment of regulation 6 of the Adjudication Regulations

6. In regulation 6(1) of the Adjudication Regulations (withdrawal of applications, appeals and references), for the words “or a medical appeal tribunal” there shall be substituted a reference to “, a medical appeal tribunal or a disability appeal tribunal”.

Amendment of regulation 7 of the Adjudication Regulations

7. In paragraphs (1) and (3) of regulation 7 of the Adjudication Regulations (striking out of proceedings for want of prosecution), for the words “or a medical appeal tribunal” there shall be substituted the words “, a medical appeal tribunal or a disability appeal tribunal”.

Amendment of regulation 20 of the Adjudication Regulations

8. In regulation 20(1) of the Adjudication Regulations (notification of decisions), for the words from “of his right of appeal” to the end of the paragraph there shall be substituted the words—

- “(a) in the case of a decision of an adjudication officer—
- (i) under section 99 of the 1975 Act relating to attendance allowance, disability living allowance or disability working allowance, or
 - (ii) on a review under section 100A(2) or (4) or section 104A of the 1975 Act, of his right to a review under section 100A(1) of that Act;
- (b) in the case of a decision of an adjudication officer under section 100A(1) of that Act, of his right of appeal—
- (i) to a disability appeal tribunal where the appeal relates to the determination of a disability question, and
 - (ii) to an appeal tribunal in any other case;
- (c) in all other cases, of his right of appeal to an appeal tribunal under section 100 of that Act.”.

Insertion of Section CA and regulations 26A to 26I

9. After Section C and regulation 26 there shall be inserted the following Section and regulations—

“SECTION CA-DISABILITY ADJUDICATION

Prescribed period

26A.—(1) Subject to paragraph (2), the prescribed period for the purpose of section 100A(1), (2) and (4) of the 1975 Act shall be three months beginning with the date on which notice in writing of the decision of an adjudication officer under section 99 of the 1975 Act was not given to the claimant.

(2) Where a claimant submits an application for review under section 100A(1) of the 1975 Act by post which would have arrived in a local office in the ordinary course of the post within the period prescribed by paragraph (1) but is delayed by postal disruption caused by industrial action whether within the postal service or elsewhere, that period shall expire

on the day the application is received in the local office if that day does not fall within the period prescribed by paragraph (1).

Manner of making applications for review under section 100A(1) of the 1975 Act

26B. An application for a review of a decision of an adjudication officer under section 100A(1), (2) and (4) of the 1975 Act shall be made to a local office.

Appeal to a disability appeal tribunal

26C.—(1) The claimant may appeal to a disability appeal tribunal from a decision of an adjudication officer under section 100A(1) of the 1975 Act in any case in which there arises—

- (a) a disability question; or
 - (b) both a disability question and any other question relating to attendance allowance, disability living allowance or disability working allowance.
- (2) In this regulation “disability question” means a question as to—
- (a) whether the claimant satisfies the conditions for entitlement to—
 - (i) the care component of a disability living allowance specified in section 37ZB(1) and (2) of the 1975 Act, or
 - (ii) the mobility component of a disability living allowance specified in section 37ZC(1), (8) and (9) of the 1975 Act⁽⁹⁾, or
 - (iii) an attendance allowance specified in section 35(1) (a) or (b) and (2) of the 1975 Act, or
 - (iv) a disability working allowance specified in section 20(6A)(b) of the Social Security Act 1986⁽¹⁰⁾;
 - (b) the period throughout which the claimant is likely to satisfy the conditions for entitlement to an attendance allowance or a disability living allowance;
 - (c) the rate at which an attendance allowance is payable⁽¹¹⁾; and
 - (d) the rate at which the care component or the mobility component of a disability living allowance is payable⁽¹²⁾;

Persons who may appeal to disability appeal tribunals and appeal tribunals

26D. A person purporting to act on behalf of a person who is terminally ill as defined in section 35(2C)⁽¹³⁾ of the 1975 Act, whether or not that other person is acting with his knowledge or authority, may appeal to a disability appeal tribunal or an appeal tribunal, as appropriate, in accordance with section 100D(1) of that Act in any case where the ground of appeal is that that person is or was at any time terminally ill.

Procedure for disability appeal tribunals

26E.—(1) A disability tribunal, except where section 100C(7)(a) of the 1975 Act applies, shall hold an oral hearing of any appeal made to it.

⁽⁹⁾ Sections 37ZB and 37ZC were inserted by section 1(2) of the 1991 Act.

⁽¹⁰⁾ Subsection (6A) was inserted by section 6(4) of the 1991 Act.

⁽¹¹⁾ See section 35(3) of the 1975 Act.

⁽¹²⁾ See sections 37ZB(4) and 37ZC(11) of the 1975 Act.

⁽¹³⁾ Section 35(2C) was inserted by section 1(1) of the Social Security Act 1990 (c. 27).

(2) Where any member of a disability appeal tribunal is not present at the consideration of a case the tribunal shall not proceed to determine that case but shall instead adjourn it for consideration by another tribunal.

(3) Where an oral hearing is adjourned and at the hearing after the adjournment the tribunal is differently constituted, otherwise than through the operation on that occasion of paragraph (2), the proceedings at that hearing shall be by way of a complete rehearing of the case.

(4) Where a disability appeal tribunal is unable to reach a unanimous decision on any case the decision of the majority of its members shall be the decision of the tribunal.

(5) The chairman of a disability appeal tribunal shall in each case—

- (a) record the decision of the tribunal in writing; and
- (b) shall include in such record a statement of the reasons for the decision, including findings on all questions of fact material to the decision, and
- (c) if a decision is not unanimous, record a statement that one of the members dissented and the reasons given by him for so dissenting.

(6) As soon as may be practicable after a case has been decided by a disability appeal tribunal, a copy of the record of the decision made in accordance with this regulation shall be sent to every party to the proceedings who shall also be informed of the conditions governing appeals to a Commissioner.

Examination and report by a medical practitioner

26F The condition which must be satisfied if a person who may be nominated as chairman of a disability appeal tribunal is to refer a claimant to a medical practitioner for examination and report is that the person who may be so nominated is satisfied that an appeal by the claimant cannot be properly determined unless the claimant is examined by a medical practitioner and the medical practitioner has provided the disability appeal tribunal with information for use in determining the appeal.

Persons who may not act as members of disability appeal tribunals

26G.—(1) A person shall not act as a member of a disability appeal tribunal in any case if he—

- (a) is or may be directly affected by that case; or
- (b) has taken any part in such case as an assessor, a medical practitioner who has regularly attended the claimant or to whom any question has been referred for report or advice, or as a witness.

(2) If a disability appeal tribunal is unable to determine a question by reason of the provisions of paragraph (1) the case shall be referred to another such tribunal.

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

26H.—(1) Subject to the following provisions of this regulation, an application to the chairman of a disability appeal tribunal for leave to appeal to a Commissioner from a decision appeal tribunal shall be made—

- (a) orally at the hearing after the decision is announced by the tribunal; or
- (b) in accordance with regulation 3 and Schedule 2.

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

(3) The decision of the chairman on an application for leave to appeal shall be recorded in writing and notice of it shall be given to every party to the proceedings.

(4) Where in any case it is impracticable, or it would be likely to cause undue delay, for an application for leave to appeal against a decision of a disability appeal tribunal to be determined by the person who was the chairman of that tribunal that application shall be determined by any other person qualified under section 97(2D) of the 1975 Act⁽¹⁴⁾ to act as a chairman of disability appeal tribunals.

Procedure of a disability appeal tribunal on receipt of a Commissioner's decision

26I.—(1) Subject to the following provisions of this regulation, the provisions of these Regulations apply for the disposal by a disability appeal tribunal of a case remitted to it following an appeal to a Commissioner as if it were an original hearing of an appeal to the disability appeal tribunal.

(2) If the case is remitted to the disability appeal tribunal following an appeal to the Commissioner in which it was decided that the decision of the disability appeal tribunal was erroneous in point of law the proceedings shall, subject to any direction of the Commissioner, be by way of a complete rehearing of the appeal by persons who were not members of the tribunal which gave the erroneous decision.”.

Amendment of regulation 29 of the Adjudication Regulations

10. Paragraph (1)(c) of regulation 29 of the Adjudication Regulations (determination of medical questions) shall be omitted.

Omission of Sections from the Adjudication Regulations

11. Section E of Part III of the Adjudication Regulations (Attendance Allowance Board) and Section B of Part IV of those Regulations (mobility allowance) shall be omitted.

Amendment of regulation 64A of the Adjudication Regulations

12. In regulation 64A of the Adjudication Regulations—

- (a) in paragraph (2), for the words “subsection (1)(a) of section 104 of the 1975 Act” there shall be substituted the words “sections 100A(2)(a) and (4), 104(1)(a) and 104A(1)(a) of the 1975 Act”; and
- (b) in paragraph (3), for the words “subsection (1A) of section 104 of the 1975 Act” there shall be substituted the words “sections 100A(d) and 104(1A) of the 1975 Act”.

Amendment of regulation 65 of the Adjudication Regulations

13. In regulation 65 of the Adjudication Regulations (review of decisions involving payment or increase of benefit other than industrial injuries benefit, mobility allowance, income support of family credit)⁽¹⁵⁾—

- (a) in paragraph (1)—

⁽¹⁴⁾ Section 97(2D) of the 1975 Act was applied to disability appeal tribunals by Schedule 10A of that Act. Schedule 10A was inserted by paragraph 16 of Schedule 1 to the 1991 Act.

⁽¹⁵⁾ Relevant amending instrument is S.I. [1987/1970](#).

- (i) for the words “mobility allowance” there shall be substituted the words “disability working allowance”,
- (ii) sub-paragraph (d) shall be omitted, and
- (iii) after sub-paragraph (e) there shall be added the following sub-paragraph—
 - “(f) in the case of attendance allowance or disability living allowance, where the decision is reviewed—
 - (i) under section 100A(1) of the 1975 Act and paragraph (ii) of this sub-paragraph does not apply, the date of claim,
 - (ii) under section 100A(1) of the 1975 Act as that subsection is applied by sections 100B(2) and 104A(6) of that Act, three months before the date of the application for review made under section 100A(2) or (4) which preceded the application for review under section 100A(1),
 - (iii) under section 100A(2) or (4) or section 104A of that Act, three months before the date of the application for review.”;
- (b) in paragraph (2), for the words “paragraphs (3) and (4)” there shall be substituted the words “paragraphs (3), (4) and (4A)”;
- (c) in paragraph (3), the word “or” shall be omitted from the end of sub-paragraph (a)(ii) and sub-paragraph (a)(iii) shall be omitted;
- (d) in paragraph (4), after the words “in any case” there shall be inserted the words “other than a case to which paragraph (4A) applies”;
- (e) after paragraph (4) there shall be inserted the following paragraphs—
 - “(4A) In any case relating to attendance allowance or disability living allowance in which the review to which the foregoing provisions of this regulation relate was based on a relevant change of circumstances to which this paragraph applies subsequent to the date from which the original decision took effect, the decision on review shall not have effect for any period before—
 - (a) the date declared by the adjudicating authority making the review to be the date on which that change took place, or
 - (b) if more than one change has taken place between the date from which the original decision took effect and the date of the application for review, the date declared by the adjudicating authority making the review to be the date on which the most recent change took place, or
 - (c) the date 3 months before the date of the application for review,whichever is the later.
 - (4B) Paragraph (4A) applies only to a relevant change of circumstances which relates to a deterioration in a person’s physical or mental condition.
 - (4C) Where a claim for an attendance allowance or a disability living allowance has been refused and either—
 - (a) an application for review of the decision is made under section 100A(1) of the 1975 Act; or
 - (b) a further claim for an attendance allowance or a disability living allowance is made within the period prescribed under section 100A(1) and is accordingly treated as an application for review in accordance with section 100A(12) of the 1975 Act

then, if that review results in an award of an attendance allowance or a disability living allowance, the decision on review shall have effect from the date specified in paragraph (4D).

(4D) The date referred to in paragraph (4C) is such date as may be specified in the decision on review being a date not later than—

- (a) in the case of an attendance allowance, 6 months; and
- (b) in the case of a disability living allowance, 3 months

after the date on which the application for review is made or the further claim is made which ever is appropriate.”.

Insertion of new regulation into the Adjudication Regulations

14. After regulation 70A(16) there shall be inserted the following regulation—

“Review in disability working allowance cases

70B.—(1) Where a claim for disability working allowance has been refused and either—

- (a) an application for review of the decision is made under section 100A(1) of the 1975 Act; or
- (b) a further claim for disability working allowance is made within the period prescribed under section 100A(1) and is accordingly treated as an application for review in accordance with section 100A(12) of the 1975 Act

then, if that review results in an award of disability working allowance, the decision on review shall have effect from the date on which the application for review is made or the further claim is made whichever is appropriate.

(2) Where a review under section 100A(1) or (2)(a) or 104A(1)(a) of the 1975 Act of a decision relating to disability working allowance arises from a disclosure of a material fact of which the person who claimed disability working allowance was, or could reasonably have been expected to be, aware but of which he previously failed to furnish information to the Secretary of State, then if that review would result in either a new award of disability working allowance or an increase in the amount of disability working allowance payable, the decision on review shall not have effect in respect of any period earlier than 12 months before the date on which that person first furnished that information.”.

Amendment of Schedule 2 to the Adjudication Regulations

15. In Schedule 2 to the Adjudication Regulations (time limits for making applications, appeals or references)—

(a) after paragraph 4 there shall be inserted the following paragraphs—

<p>“4A. Appeal to a A local office. disability tribunal from a decision on review of an adjudication officer under section 100A(1) of the 1975 Act.</p>	<p>3 months beginning with the date when notice in writing of the decision was given to the appellant.</p>
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4B. Appeal to an appeal tribunal from a decision on a review of an adjudication officer under section 100A(1) of the 1975 Act.	A local office.	3 months beginning with the date when notice in writing of the decision was given to the appellant.”;
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6A Applications to the chairman for leave to appeal to a Commissioner from the decision of a disability appeal tribunal.	The office of the clerk to the disability appeal tribunal.	3 months beginning with the date when a copy of the record of the decision was given to the applicant.”.
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Outstanding claims and questions relating to mobility allowance

16. Notwithstanding the revocation of regulation 29(1)(c) (determination of medical questions) and Section B of Part IV (mobility allowance) of the Adjudication Regulations and of the reference to “mobility allowance” in regulation 65(1) of those Regulations, those provisions shall continue to have effect during the period beginning on 3rd February 1992 and ending on 5th April 1992 for the purposes of determining any claim or question relating to mobility allowance as though these Regulations had not come into force.

Signed by authority of the Secretary of State for Social Security.

18th December 1991

Nicholas Scott
Minister of State,
Department of Social Security

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions in the Social Security (Adjudication) Regulations 1986 (S.I.1986/2218) (“the Adjudication Regulations”) and are consequential upon the coming into force of the Disability Living Allowance and Disability Working Allowance Act 1991.

Regulations 2 to 7 amend regulations 1, 2, 3, 4, 6 and 7 of the Adjudication Regulations (which make provision for adjudication procedures common to all social security benefits) by inserting references to disability appeal tribunals.

Regulation 8 amends regulation 20 of the Adjudication Regulations (notification of decisions) so that this regulation applies to decisions of an adjudication officer relating to claims for attendance allowance, disability living allowance and disability working allowance.

Regulation 9 inserts a new Section relating to the adjudication of claims for attendance allowance, disability living allowance and disability working allowance into the Adjudication Regulations and in particular prescribes—

- (a) a period of three months as the period during which a claimant may ask for a review of an adjudication officer’s decision on any ground (regulation 26A), and
- (b) the cases in which a claimant may appeal to a disability appeal tribunal (regulation 26C).

Regulations 10 and 11 revoke regulation 29(1)(c) (determination of medical questions) and Section E of Part III (Attendance Allowance Board) and Section B of Part IV (mobility allowances) of the Adjudication Regulations.

Regulation 12 amends regulation 64A of the Adjudication Regulations so as to enable a decision on a review relating to disability living allowance; disability working allowance and attendance allowance to take effect, in certain circumstances, from the date from which the authority giving the decision being reviewed could have awarded benefit.

Regulation 13 amends regulation 65 of the Adjudication Regulations so as to remove the reference to mobility allowance and make provision for the date on which a review of a decision relating to attendance allowance or disability living allowance shall take effect and regulation 14 inserts a new regulation 70B into the Adjudication Regulations which makes provision for the date on which a review of disability working allowance shall take effect.

Regulation 15 amends Schedule 2 to the Adjudication Regulations so as to provide time limits for the making of appeals and applications for leave to appeal against decisions relating to attendance allowance, disability living allowance and disability working allowance.

Regulation 16 enables certain provisions in the Adjudication Regulations relating to mobility allowance which are revoked by these Regulations to continue to apply for a specified period.