
STATUTORY INSTRUMENTS

1995 No. 1801

SOCIAL SECURITY

The Social Security (Adjudication) Regulations 1995

Made - - - - *13th July 1995*
Laid before Parliament *20th July 1995*
Coming into force - - *10th August 1995*

The Secretary of State for Social Security in exercise of the powers set out in Schedule 1, and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽¹⁾, hereby makes the following Regulations:

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Adjudication) Regulations 1995 and shall come into force on 10th August 1995.

(2) In these Regulations, unless the context otherwise requires—

“the Acts” means the Social Security Contributions and Benefits Act 1992⁽²⁾ and the Social Security Administration Act 1992⁽³⁾;

“the Administration Act” means the Social Security Administration Act 1992⁽³⁾;

“adjudicating authority” means, as the case may be, an adjudicating medical practitioner, the Chief or any other adjudication officer, an appeal tribunal, a medical appeal tribunal, a disability appeal tribunal, a medical board or a special medical board;

“adjudicating medical authority” has the meaning assigned to it by regulation 34;

“adjudicating medical practitioner” means a medical practitioner appointed in accordance with section 49(1) of the Administration Act;

(1) 1992 c. 53.
(2) 1992 c. 4.
(3) 1992 c. 5.
(3) 1992 c. 5.

“adjudication officer” means an officer appointed in accordance with section 38(1) of the Administration Act;

“appeal tribunal” means a social security appeal tribunal constituted in accordance with section 41(1) to (5) of the Administration Act;

“Chief Adjudication Officer” means the Chief Adjudication Officer appointed under section 39(1) of the Administration Act;

“claimant” means a person who has claimed benefit under the Acts (including, in relation to an award or decision, a beneficiary under the award or a person affected by the decision) or from whom benefit is alleged to be recoverable, and in relation to statutory sick pay and statutory maternity pay includes both the employee alleged to be entitled to and the employer alleged to be liable to pay such pay;

“Commissioner” means the Chief or any other Social Security Commissioner appointed in accordance with section 52(1) of the Administration Act and includes a Tribunal of 3 such Commissioners constituted in accordance with section 57 of that Act;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(4);

“disability appeal tribunal” means a tribunal constituted in accordance with section 43 of the Administration Act;

“disability question” has the meaning assigned by regulation 27(2);

“full-time chairman” means a regional or other full-time chairman of appeal tribunals, medical appeal tribunals and disability appeal tribunals appointed under section 51 of the Administration Act;

“income support” means income support under Part VII of the Contributions and Benefits Act and includes personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations 1987(5);

“Income Support Regulations” means the Income Support (General) Regulations 1987(6);

“inquiry” means an inquiry held pursuant to section 17(4) of the Administration Act;

“local office” means an office of the Department of Social Security, an office of the Department for Education and Employment or the office of the Chief Adjudication Officer;

“medical appeal tribunal” means a tribunal constituted in accordance with section 50 of the Administration Act;

“medical board” and “special medical board” have the meanings assigned to them by regulation 34;

“party to the proceedings” means—

- (a) the claimant;
- (b) in proceedings before an appeal tribunal or a disability appeal tribunal, the adjudication officer;
- (c) in proceedings relating to the determination of a question included in section 17(1) of the Administration Act, any person interested within the meaning of regulation 12;
- (d) in any other proceedings, the adjudication officer and the Secretary of State except in proceedings in which the adjudication officer or the Secretary of State is the adjudicating authority;

(4) 1992 c. 4.

(5) S.I. 1987/1969.

(6) S.I. 1987/1967.

- (e) any other person appearing to the Secretary of State, the adjudicating authority or, in the case of a tribunal or board, its chairman or in relation to an inquiry, the person appointed to hold the inquiry, to be interested in the proceedings;

“the Prescribed Diseases Regulations” means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985(7);

“President” means the President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals appointed under section 51(1) of the Administration Act;

“proceedings” means proceedings on a claim, application, appeal or reference to which these Regulations apply;

“specially qualified adjudicating medical practitioner” means a specially qualified adjudicating medical practitioner appointed by virtue of section 62 of the Administration Act; and

“the Supplementary Benefits Act” means the Supplementary Benefits Act 1976(8).

- (3) Where, by any provision of the Acts or of these Regulations—

(a) any notice or other document is required to be given or sent to any office, that notice or document shall be treated as having been so given or sent on the day that it is received in that office; and

(b) any notice or other document is required to be given or sent to any person, that notice or document shall, if sent by post to that person’s last known or notified address, be treated as having been given or sent on the day that it was posted.

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered or lettered Part, section, regulation or Schedule is a reference to the Part, Section, regulation or Schedule bearing that number or letter in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(5) Unless otherwise provided, where by these Regulations any power is conferred on a chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal then—

(a) if the power is to be exercised at the hearing of an appeal or application, it shall be exercised by the chairman of the tribunal hearing the appeal or application; and

(b) otherwise, it shall be exercised by a person who is eligible to be nominated to act as a chairman of an appeal tribunal under section 41 of the Administration Act(9).

PART II

COMMON PROVISIONS

Procedure in connection with determinations; and right to representation

2.—(1) Subject to the provisions of the Administration Act and of these Regulations—

- (a) the procedure in connection with the consideration and determination of any claim or question to which these Regulations relate shall be such as the Secretary of State, the adjudicating authority or the person holding the inquiry, as the case may be, shall determine; so however that in the case of a tribunal or board, the procedure shall be such as the chairman shall determine;

(7) S.I. 1985/967.

(8) 1976 c. 71.

(9) Section 41 was amended by paragraph 36 of Schedule 3 to the Tribunals and Inquiries Act 1992 (c. 53).

- (b) any person who by virtue of the provisions of these Regulations has the right to be heard at a hearing or an inquiry may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at any such hearing or inquiry, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Administration Act and these Regulations.

(2) For the purpose of arriving at its decision an appeal tribunal, a medical board, a special medical board, a medical appeal tribunal or a disability appeal tribunal, as the case may be, shall, and for the purpose of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons not being members of the tribunal or board, other than the person acting as clerk to the tribunal or board, to withdraw from the sitting of the tribunal or board, except that,

- (a) a member of the Council on Tribunals or of the Scottish Committee of the Council and the President and any full-time chairman; and
- (b) with the leave of the chairman of the tribunal or board, and if no person having the right to be heard objects, any person mentioned in regulation 4(6)(b) and (d) (except a person undergoing training as an adjudication officer or as an adjudicating medical practitioner),

may remain present at any such sitting.

(3) Nothing in these Regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee of the Council from being present at a hearing before an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal or at any inquiry, in his capacity as such, notwithstanding that the hearing or inquiry is not in public.

Manner of making applications, appeals or references; and time limits

3.—(1) Any application, appeal or reference mentioned in column (1) of Schedule 2 shall be in writing and shall be made or given by sending or delivering it to the appropriate office within the specified time.

(2) In this regulation—

- (a) “the appropriate office” means the office specified in column (2) of Schedule 2 opposite the description of the relevant application, appeal or reference listed in column (1); and
- (b) “the specified time” means the time specified in column (3) of that Schedule opposite the description of the relevant application, appeal or reference so listed.

(3) The time specified by this regulation and Schedule 2 for the making of any application, appeal or reference (except an application to the chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal for leave to appeal to a Commissioner) may be extended for special reasons, even though the time so specified may already have expired, and any application for an extension of time under this paragraph shall be made to and determined by the person or body to whom the application, appeal or reference is sought to be made or, in the case of a tribunal or board, its chairman.

(4) An application under paragraph (3) for an extension of time which has been refused may not be renewed.

(5) Any application, appeal or reference under these Regulations shall contain particulars of the grounds on which it is made or given and, in the case of an appeal, it shall include sufficient particulars of the decision under appeal to enable that decision to be identified.

(6) Where it appears to the Secretary of State, an adjudication officer or the chairman of a tribunal or board that an application, appeal or reference which is made to him or to the tribunal or board gives insufficient particulars to enable the question at issue to be determined, he may require the person

making the application, appeal or reference to furnish such further particulars as may reasonably be required.

(7) A chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may give directions for the disposal of any purported appeal where he is satisfied that the tribunal does not have jurisdiction to entertain the appeal.

Oral hearings and inquiries

4.—(1) This regulation applies to any oral hearing of an application, appeal or reference and to any inquiry.

(2) Reasonable notice (being not less than 10 days beginning with the day on which the notice is given and ending on the day before the hearing of the case or, as the case may be, the inquiry is to take place) of the time and place of any oral hearing before an adjudicating authority or of an inquiry shall be given to every party to the proceedings, and if such notice has not been given to a person to whom it should have been given under the provisions of this paragraph the hearing or inquiry may proceed only with the consent of that person.

(3) If a party to the proceedings to whom notice has been given under paragraph (2) shall fail to appear at the hearing or inquiry the adjudicating authority or the person holding the inquiry may, having regard to all the circumstances including any explanation offered for the absence, proceed with the case of inquiry notwithstanding his absence, or give such directions with a view to the determination of the case or conduct of the inquiry as it or he may think proper.

(4) Any oral hearing before an adjudicating authority and any inquiry shall be in public except where (in the case of an oral hearing) the claimant requests a private hearing or (in any case) the chairman or the person holding the inquiry is satisfied that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved, in which case the hearing or inquiry shall be in private.

(5) At any oral hearing or inquiry any party to the proceedings shall be entitled to be present and be heard.

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

- (a) the President and any full-time chairman;
- (b) any person undergoing training as a chairman or other member of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal or as a clerk to any such tribunal, or as an adjudication officer or an adjudicating medical practitioner;
- (c) any person acting on behalf of the President, the Chief Adjudication Officer or the Secretary of State in the training or supervision of clerks to appeal tribunals, medical appeal tribunals or disability appeal tribunals or of adjudication officers or officers of the Secretary of State or in the monitoring of standards of adjudication by adjudication officers; and
- (d) with the leave of the chairman of the tribunal or board, as the case may be, and the consent of every party to the proceedings actually present, any other person.

(7) At any inquiry (whether or not it is otherwise in private) the following persons shall be entitled to be present but shall take no part in the proceedings—

- (a) any person undergoing training as an officer of the Secretary of State; and
- (b) any person acting on behalf of the Secretary of State in the training or supervision of officers of the Secretary of State; and
- (c) with the leave of the person holding the inquiry and the consent of all parties to the proceedings actually present, any other person.

(8) Nothing in paragraph (6) affects the rights of any person mentioned in sub-paragraphs (a) and (b) of that paragraph at any oral hearing where he is sitting as a member of the tribunal or acting as its clerk, and nothing in this regulation prevents the presence at an oral hearing or an inquiry of any witness.

(9) Any person entitled to be heard at an oral hearing or inquiry may address the adjudicating authority or person holding the inquiry, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

Postponement and adjournment

5.—(1) Where a person to whom notice of an oral hearing by an adjudicating authority or an inquiry has been given wishes to apply for that hearing or inquiry to be postponed he shall do so in writing to the chairman or, as the case may be, the person appointed to hold the inquiry stating his reasons for the application, and the chairman or person appointed may grant or refuse the application as he thinks fit.

(2) A chairman may of his own motion at any time before the beginning of the hearing postpone the hearing.

(3) An oral hearing or an inquiry may be adjourned by the adjudicating authority or, as the case may be, the person appointed to hold the inquiry at any time on the application of any party to the proceedings or of its or his own motion.

Withdrawal of applications, appeals and references

6.—(1) A person who has made an application to the chairman of the tribunal for leave to appeal to a Commissioner against a decision of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may withdraw his application at any time before it is determined by giving written notice of intention to withdraw to the chairman.

(2) Any appeal to an adjudicating authority made under the Administration Act or these Regulations may be withdrawn by the person who made the appeal—

- (a) before the hearing begins by giving written notice of intention to withdraw to the adjudicating authority to whom the appeal was made and with the consent in writing of—
 - (i) in a case which originated in a decision of an adjudication officer, an adjudication officer; or
 - (ii) in any other case, the Secretary of State,

and, in any case, of any other party to the proceedings; or

- (b) after the hearing has begun, with the leave of the adjudicating authority or, in the case of a tribunal or board, its chairman, at any time before the determination is made.

(3) A reference by an adjudication officer to an appeal tribunal under section 21(2) of the Administration Act or to a medical board under regulation 45(3) or to a medical appeal tribunal under section 46(3) of the Administration Act may be withdrawn by him at any time before the reference is determined by giving written notice of intention to withdraw to the adjudicating authority to whom the reference was made, but in the case of a reference under section 46(3) of the Administration Act made at the instance of the Secretary of State only with his consent.

(4) An application under regulation 13 for a decision of the Secretary of State on any question may, with his leave, be withdrawn at any time before the decision is given.

Striking-out of proceedings for want of prosecution

7.—(1) The chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may, subject to paragraph (2), on the application of any party to the proceedings or of his own motion, strike out any application, appeal or reference for want of prosecution including the failure of the appellant to comply with a direction given by the chairman under regulation 2(1)(a).

(2) The chairman shall not make an order under paragraph (1) before a notice has been sent to the person against whom it is proposed that any such order should be made giving him a reasonable opportunity to show cause why such an order should not be made.

(3) The chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may, on application by the party concerned, made not later than 12 months beginning with the date of the order made under paragraph (1), give leave to reinstate any application, appeal or reference which has been struck out in accordance with paragraph (1).

Non-disclosure of medical evidence

8.—(1) Where, in connection with the consideration and determination of any claim or question there is before an adjudicating authority medical advice or medical evidence relating to a person which has not been disclosed to him and in the opinion of the adjudicating authority or, in the case of a tribunal or board, its chairman, the disclosure to that person of that advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to that person.

(2) Evidence such as is mentioned in paragraph (1) shall not be disclosed to any person acting for or representing the person to whom it relates or, in a case where a claim for benefit is made by reference to the disability of a person other than the claimant and the evidence relates to that other person, shall not be disclosed to the claimant or any person acting for or representing him, unless the adjudicating authority, or in the case of a tribunal or board, its chairman, is satisfied that it is in the interests of the person to whom the evidence relates to do so.

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

(4) In this regulation “adjudicating authority” includes the Secretary of State in a case involving a question which is for determination by him.

Correction of accidental errors in decisions

9.—(1) Subject to regulation 11 (provisions common to regulations 9 and 10) accidental errors in any decision or record of a decision may at any time be corrected by the adjudicating authority who gave the decision or by an authority of like status.

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

Setting aside decisions on certain grounds

10.—(1) Subject to regulation 11 (provisions common to regulations 9 and 10), on an application made by a party to the proceedings, a decision may be set aside by the adjudicating authority who gave the decision or by an authority of like status in a case where it appears just to set the decision aside on the ground that—

- (a) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or the party’s

representative or was not received at an appropriate time by the adjudicating authority who gave the decision; or

- (b) a party to the proceedings in which the decision was given or the party's representative was not present at a hearing or inquiry relating to the proceedings; or
- (c) the interests of justice so require.

(2) An application under this regulation shall be made in accordance with regulation 3 and Schedule 2.

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

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

(5) For the purposes of determining under these Regulations an application to set aside a decision there shall be disregarded regulation 1(3)(b) and any provision in any enactment or instrument to the effect that any notice or other document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to that person's last known or notified address.

Provisions common to regulations 9 and 10

11.—(1) In regulations 9 and 10 “adjudicating authority” includes the Secretary of State.

(2) In calculating any time specified in Schedule 2 there shall be disregarded any day falling before the day on which notice was given of a correction of a decision or the record thereof pursuant to regulation 9 or on which notice is given of a determination that a decision shall not be set aside following an application made under regulation 10, as the case may be.

(3) There shall be no appeal against a correction made under regulation 9 or a refusal to make such a correction or against a determination given under regulation 10.

(4) Nothing in this Part shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.

PART III

ADJUDICATING AUTHORITIES

SECTION A —

THE SECRETARY OF STATE

Construction of Section A

12. In this Section “a person interested” means, except in relation to statutory sick pay or statutory maternity pay, a person whose interest in the application or decision relates to that person's own liability under the Acts or his actual or potential rights under them and in relation to statutory sick pay or statutory maternity pay means an employer or employee (including a person who is alleged or claims to be the employer or employee of another person)—

- (a) in relation to whose rights, duties or obligations under Parts XI and XII of the Contributions and Benefits Act or under regulations under those Parts, a question has arisen that is for

determination by the Secretary of State under section 17(1)(g) or (h) of the Administration Act; or

- (b) whose rights, duties or obligations are called in question by way of review of a determination under section 19 of the Administration Act,

and references to a person appearing to be interested shall be construed accordingly.

Application for decision of the Secretary of State on principal questions

13.—(1) A person desiring to obtain the decision of the Secretary of State on any of the questions mentioned in section 17(1) of the Administration Act (including those to which that section applies by virtue of section 170(1) of the Pension Schemes Act 1993⁽¹⁰⁾) shall deliver or send to the Secretary of State an application for the purpose in writing in a form approved by him.

(2) The Secretary of State shall take steps to bring any such application to the notice of any person appearing to him to be interested in the application and to obtain from such person such particulars within such time and in such form as he considers reasonably necessary for the proper determination of the question.

(3) An application for a decision of the Secretary of State shall not be made otherwise than by a person interested or, in the case of an application relating to statutory sick pay or statutory maternity pay, by an inspector appointed under section 110 of the Administration Act.

(4) Nothing in paragraph (1) or (3) shall affect any right or obligation under the Acts or Regulations made under the Acts to refer any question to the Secretary of State.

Procedure for inquiries

14. Any person appointed by the Secretary of State under section 17(4) of the Administration Act to hold an inquiry into any question or any matters arising in connection therewith and to report to him thereon may—

- (a) by summons require persons to attend any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry;
- (b) require any person so summoned, or who otherwise attends to give evidence, to be examined on oath; and
- (c) for that purpose administer oaths.

The Secretary of State's decision and statement of grounds

15.—(1) The Secretary of State shall give notice in writing of his decision under section 17 of the Administration Act and of the right to request a statement of the grounds of the decision to the applicant and to any persons appearing to him to be interested therein and may publish his decision in such manner as he thinks fit.

(2) The applicant and any other persons appearing to the Secretary of State to be interested shall, on request, be furnished with such a statement of the grounds of the Secretary of State's decision under section 17 of the Administration Act as will enable him to determine whether any question of law (not being a question which has been referred to the High Court or the Court of Session in accordance with section 18(1) of that Act) has arisen upon which he may appeal to the High Court or the Court of Session under section 18(3) of that Act.

(10) 1993 c. 48.

Review of reference

16.—(1) The provisions of regulation 13(3) and (4) shall apply to any application for a review under section 19(1) of the Administration Act of a decision under section 17(1) of that Act as they apply to an application under regulation 13(1).

(2) The provisions of regulations 13(2), 14 and 15 shall apply with the necessary modifications to any case in which—

- (a) a question has been raised with a view to the review under section 19(1) of the Administration Act of any decision of the Secretary of State given in accordance with this Section of this Part of these Regulations; or
- (b) a question such as is mentioned in regulation 13(1) is referred to the Secretary of State—
 - (i) under section 37(1) of the Administration Act (reference by an adjudicator of any such question for determination where such question arises on the consideration of any claim or question); or
 - (ii) under section 117(2) of the Administration Act (reference of such question for decision by the Secretary of State where the decision thereof is necessary for the determination of any proceedings).

Questions for determination by the Secretary of State

17.—(1) It shall be for the Secretary of State to determine—

- (a) a question whether—
 - (i) an increase of disablement pension under section 104 of the Contributions and Benefits Act (constant attendance), or
 - (ii) a further increase under section 105 of the Contributions and Benefits Act (exceptionally severe disablement), is to be granted or renewed and, if so, for what period and of what amount;
- (b) a question how the limitations under Part VI of Schedule 7 to the Contributions and Benefits Act on the benefit payable in respect of any death are to be applied in the circumstances of any case.
- (c) a question arising under Regulations made under section 7 of the Administration Act (claims in the alternative or in addition).

(2) The Secretary of State may review any determination given by him on any question referred to in paragraph (1) if—

- (a) new facts have been brought to his notice, or
- (b) he is satisfied that the determination—
 - (i) was given in ignorance of some material fact,
 - (ii) was based on a mistake as to some material fact, or
 - (iii) was erroneous in point of law.

(3) A decision of the Secretary of State on a question under section 70(7) of the Contributions and Benefits Act or on any question which by virtue of regulations falls to be determined by the Secretary of State in his discretion may be given so as to have effect with respect to a period before the date of the decision; and he may at any time and from time to time reconsider the exercise of his discretion with respect to such a question and decide it again with such other effects as may seem to him to be proper in the circumstances of the case.

*SECTION B—
ADJUDICATION OFFICERS*

Notification of decisions

18.—(1) Subject to paragraph (2) and regulation 55, the decision of an adjudication officer on any claim or question and the reasons for it shall be notified in writing to the claimant who shall at the same time be informed—

- (a) in the case of a decision of an adjudication officer—
 - (i) under section 21 of the Administration Act relating to attendance allowance, disability living allowance or disability working allowance, or
 - (ii) on a review under section 30(2) or (4) or section 35 of the Administration Act, of his right to a review under section 30(1) of that Act;
- (b) in the case of a decision of an adjudication officer under section 30(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 22 of that Act.

(2) Paragraph (1) does not apply in relation to a decision (other than a decision given on review) awarding benefit for a period which begins immediately after a period in respect of which the claimant had been awarded benefit of the same kind and at the same rate as that awarded by the first-mentioned decision.

Procedure on claim or question involving questions for determination by the Secretary of State

19.—(1) Where an adjudication officer has decided any claim or question on an assumption of facts as to which there appeared to him to be no dispute, but concerning which, had a question arisen, that question would have fallen for determination by the Secretary of State, it shall be deemed to be a sufficient compliance with the requirements of regulation 18 as to notification to the claimant, to give him notice in writing informing him of the decision and of the reasons for it and that, if he is dissatisfied with the decision, he should reply to that effect, giving the reasons for his dissatisfaction.

- (2) Where—
 - (a) the claimant replies to the notice referred to in paragraph (1) expressing his dissatisfaction with the decision, and
 - (b) after any appropriate investigations and explanations have been made, the claimant nonetheless remains dissatisfied with the decision, and
 - (c) an adjudication officer certifies that the sole ground for dissatisfaction appears to be the assumption referred to in paragraph (1),

the claimant shall be notified in writing of his right to apply for the determination by the Secretary of State of the question arising on the assumption.

- (3) Where the Secretary of State's decision—
 - (a) upholds the assumption, section 22(3) of the Administration Act shall apply as if the adjudication officer had given the certificate therein referred to:
 - (b) does not uphold the assumption, the Secretary of State's decision may be treated by the adjudication officer as an application for the review of the adjudication officer's decision,

and for the purposes of regulation 59, the date of the claimant's application for the Secretary of State's decision shall be treated as the date of the application for review.

Reference by an employee of questions relating to statutory sick pay or statutory maternity pay for determination by an adjudication officer

20.—(1) A question in relation to statutory sick pay or statutory maternity pay to which sections 20(3), 21(4), 22(1) and (2) and 23(2) of the Administration Act applies may be submitted to an adjudication officer by the employee concerned in accordance with the following provisions of this regulation and not otherwise.

(2) A reference of any such question by an employee shall be made by way of an application in writing in a form approved for the purpose of the Secretary of State or in such other manner, being in writing, as he may accept as sufficient in the circumstances.

(3) Such an application made by an employee shall—

- (a) be delivered or sent to a local office within 6 months of the earliest day in respect of which liability for statutory sick pay or statutory maternity pay is in dispute; and
- (b) state the grounds (if any) on which the applicant's employer has denied liability for statutory sick pay or statutory maternity pay in respect of the period specified in the application.

Reference of a special question in child benefit cases

21.—(1) In this regulation—

“child benefit” means child benefit under Part IX of the Contributions and Benefits Act;

“question” means any question as to the right to benefit other than a special question; and

“special question” means any question relating to child benefit which, under the provisions of Schedule 10 to the Contributions and Benefits Act or Regulations made under the Acts, falls to be determined by the Secretary of State in his discretion; any question whether an establishment is a recognised educational establishment as defined in section 147(1) of the Contributions and Benefits Act or any question which by virtue of the provisions of regulation 5 of the Child Benefit (Residence and Persons Abroad) Regulations 1976(**11**) falls to be determined by the Secretary of State under the provisions of the Administration Act as if it were a question arising under that Act.

(2) The following paragraphs apply if on consideration of any claim or question an adjudication officer is of the opinion that there arises a special question.

(3) Subject to paragraph (4), the adjudication officer shall—

- (a) refer the question so arising for determination by the Secretary of State; and
- (b) deal with any other question as if the question so referred had not arisen.

(4) The adjudication officer may—

- (a) postpone the reference of, or dealing with, any question until other questions have been determined;
- (b) in cases where the determination of any question disposes of a claim, or any part of it, determine that question and dispose of the claim or that part of it, without referring or dealing with any other question.

(11) S.I. 1976/963; the relevant amending instrument is S.I. 1976/1758.

*SECTION C—
APPEAL TRIBUNALS*

Oral hearing of appeals and references

22.—(1) An appeal tribunal shall, except where section 29(a) of the Administration Act applies, hold an oral hearing of every appeal or reference made to it.

(2) Any case may with the consent of the claimant or his representative, but not otherwise, be proceeded with in the absence of any one member other than the chairman.

(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) Paragraphs (3) and (4) of regulation 21 apply to an appeal tribunal as they apply to an adjudication officer, except that a tribunal shall, instead of referring a question in accordance with paragraph (3)(a) of that regulation, direct it to be so referred by an adjudication officer.

Decisions of appeal tribunals

23.—(1) The decision of the majority of the appeal tribunal shall be the decision of the tribunal but, where the tribunal consists of an even number, the chairman shall have a second or casting vote.

(2) The chairman of an appeal tribunal shall—

- (a) record in writing all its decisions (whether on an appeal or on a reference from an adjudication officer); and
- (b) include in the record of every decision a statement of the reasons for such decision and of its findings on questions of fact material thereto; and
- (c) if a decision is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting.

(3) As soon as may be practicable after a case has been decided by an appeal tribunal, a copy of the record of its 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.

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

24.—(1) Subject to the following provisions of this regulation, an application to the chairman of an appeal tribunal for leave to appeal to a Commissioner from a decision of an 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 made under paragraph (1) (a) shall be recorded in the record of the proceedings of the tribunal, and on an application under paragraph (1)(b) shall be recorded in writing and a copy shall be sent 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 an 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 41(4) of the Administration Act to act as a chairman of appeal tribunals.

SECTION D—

DISABILITY ADJUDICATION

Prescribed period

25.—(1) Subject to paragraph (2), the prescribed period for the purposes of section 30(1), (2) and (4) of the Administration Act shall be three months beginning with the date on which notice in writing of the decision of an adjudication officer under section 21 of that Act was given to the claimant.

(2) Where a claimant submits an application for review under section 30(1) of the Administration 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 30(1) of the Administration Act

26. An application for a review of a decision of an adjudication officer under section 30(1), (2) and (4) of the Administration Act shall be made to a local office.

Appeal to a disability appeal tribunal

27.—(1) The claimant may appeal to a disability appeal tribunal from a decision of an adjudication officer under section 30(1) of the Administration 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 72(1) and (2) of the Contributions and Benefits Act, or
 - (ii) the mobility component of a disability living allowance specified in section 73(1), (8) and (9) of the Contributions and Benefits Act, or
 - (iii) an attendance allowance specified in sections 64 and 65(1) of the Contributions and Benefits Act, or
 - (iv) a disability working allowance specified in section 129(1)(b) of the Contributions and Benefits Act;
 - (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⁽¹²⁾; and
 - (d) the rate at which the care component or the mobility component of a disability living allowance is payable⁽¹³⁾.

⁽¹²⁾ See section 65(3) of the Contributions and Benefits Act.

⁽¹³⁾ See sections 72(4) and 73(11) of the Contributions and Benefits Act.

Persons who may appeal to disability appeal tribunals and appeal tribunals

28. A person purporting to act on behalf of a person who is terminally ill as defined in section 66(2) of the Contributions and Benefits 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 33(1) of the Administration 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

29.—(1) A disability appeal tribunal, except where section 32(7)(a) of the Administration Act applies, shall hold an oral hearing of any appeal made to it.

(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) 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 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

30. 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

31.—(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 to a Commissioner from a disability appeal tribunal

32.—(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 of a disability 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 43(5) of the Administration Act(14) to act as a chairman of disability appeal tribunals.

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

33.—(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.

SECTION E—

MEDICAL ADJUDICATION

Construction of Section E

34. In this Section—

“adjudicating medical authority” means, as the case may be, an adjudicating medical practitioner, a specially qualified adjudicating medical practitioner, a medical board or a special medical board;

“medical board” means 2 or more adjudicating medical practitioners nominated by the Secretary of State to act jointly in the consideration of a case; and

“special medical board” means a medical board of which at least 2 of the members are specially qualified adjudicating medical practitioners.

Appointment of adjudicating medical practitioners and specially qualified adjudicating medical practitioners

35.—(1) Adjudicating medical practitioners shall be appointed by the Secretary of State to act for such area or areas as may be specified in the instrument of appointment.

(2) Specially qualified adjudicating medical practitioners shall be appointed by the Secretary of State to act for such area or areas as may be specified in the instrument of appointment.

Determination of medical questions

(a) (i) Section 47(1) of the Administration Act shall have effect as if for the words“an adjudicating medical practitioner” in the second place where they occur there are substituted the words“a medical board”;

(ii) section 47(2) of the Administration Act shall have effect as if for the words“such a practitioner if he” there are substituted the words“a medical board if it”;

(b) any case which, in the opinion of the Secretary of State, should be determined by more than one adjudicating medical practitioner, shall be referred to and determined by a medical board.

(2) Subject to the provisions of Section A of Part IV any question arising in connection with a claim made in respect of any of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 or D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations(15) shall be referred to and determined by a specially qualified adjudicating medical practitioner except where a question mentioned in paragraph (1) arises, in which case it shall be referred to and determined by a special medical board.

(3) Any question which falls to be determined by an adjudicating medical authority other than those within paragraphs (1) and (2) shall be referred to and determined by an adjudicating medical practitioner.

(4) Where a case has been referred to an adjudicating medical practitioner for determination the Secretary of State may, at any time before the determination is made, revoke that reference and refer the case instead to a medical board.

(5) Where a case has been referred to a medical board or a special medical board consisting of 2 members and they are unable to agree, the reference to that board shall be revoked and the case shall be referred to a board consisting of 3 members and if they are not unanimous the decision of the majority shall be the decision of the board.

(6) The Secretary of State shall appoint one of the members of any medical board or special medical board to act as chairman.

(7) A medical board or special medical board shall not determine any question unless all the members thereof are present at the consideration of that question, and if any member of the board is absent the reference to that board shall be revoked and the case shall be referred to another such board.

(8) Reasonable notice (being not less than 10 days beginning with the day on which the notice is given and ending on the day before the sitting is to take place) of the time and place at which an adjudicating medical authority will sit for the consideration of any case shall be given to the claimant and if such notice is not given or if, after such notice has been given, the claimant should fail to appear at the sitting of the authority, the authority may proceed to determine the questions referred to him or them only with the claimant’s consent.

(9) For the purposes of these Regulations a sitting of an adjudicating medical authority is not an oral hearing, and the only persons entitled to be present and be heard during the consideration of

(15) Relevant amending instruments are S.I. 1986/1374, 1987/335, 1991/1938, 1993/862, 1985.

any question by such an authority are the claimant and any other person whom the authority may, with the consent of the claimant, allow to be present as being a person who, in his or their opinion, is likely to assist him or them in the determination of that question.

Decisions of adjudicating medical authorities

37.—(1) An adjudicating medical authority shall in each case record his or their decision in writing in such form as may from time to time be approved by the Secretary of State and shall include in such record (which shall be signed by all members of the authority)—

- (a) a statement of his or their findings on all questions of fact material to such decision; and
- (b) in a case in which the decision of a medical board or special medical board consisting of 3 members was not unanimous, a statement that one of the members dissented and of the reasons given by him for dissenting.

(2) As soon as may be practicable, the claimant shall be sent written notice of the decision of the adjudicating medical authority, and such notice shall be in such form as may from time to time be approved by the Secretary of State and shall contain a summary of the findings of the authority, including, where the decision was not unanimous, a statement that one of the members dissented and of the reasons given by him for dissenting.

(3) A person to whom written notice of the decision of an adjudicating medical authority is sent in accordance with paragraph (2) shall be informed in writing of the conditions governing an appeal to a medical appeal tribunal.

Medical appeal tribunals

38.—(1) A medical appeal tribunal shall hold an oral hearing of any appeal or reference made to it.

(2) Where any member of a medical 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 a medical 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.

(4) A medical appeal tribunal shall in each case record its decision in writing and shall include in such record, which shall be signed by all members of the tribunal, a statement of the reasons for its decision, including its findings on all questions of fact material to the decision.

(5) As soon as may be practicable after a case has been decided by a medical appeal tribunal, a copy of the record of its 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.

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

39.—(1) Subject to the following provisions of this regulation, an application to the chairman of a medical appeal tribunal for leave to appeal to a Commissioner from a decision of a medical appeal tribunal shall be made in accordance with regulation 3 and Schedule 2.

(2) Where an application in writing for leave to appeal is made by the Secretary of State or 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 medical 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 50(4) of the Administration Act to act as a chairman of medical appeal tribunals.

Disqualification from acting as an adjudicating medical authority or as a member thereof or as a member of a medical appeal tribunal

40.—(1) Subject to paragraphs (2) and (3), a person shall not act as an adjudicating medical authority or as a member thereof or as a member of a medical appeal tribunal in any case if he—

- (a) is or may be directly affected by that case;
- (b) has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or to whom any question has been referred for report or as an employer or as a witness; or
- (c) in the case only of a medical appeal tribunal, has acted as an adjudicating medical authority, or a member thereof, to whom the case was referred.

(2) A medical practitioner to whom a question has been referred under regulation 45(1) (reference of diagnosis and recrudescence questions for medical report) shall not be precluded from acting as an adjudicating medical practitioner or a specially qualified adjudicating medical practitioner solely by reason of his having prepared, under that regulation, a report on the case of the claimant (whether in relation to the question for determination or otherwise) if he proposes to determine the question in favour of the claimant.

(3) A medical practitioner shall not be precluded from acting as a member of a special medical board for the purpose of the consideration of a case solely because he has taken part in that case as a medical practitioner to whom a question relating to any of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 or D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations has been referred for report.

(4) If an adjudicating medical authority or a medical appeal tribunal is unable to determine a question by reason of the provisions of paragraph (1) the reference to that authority or tribunal shall be revoked and the case shall be referred to another such authority or tribunal.

Application for review involving review of decision of a medical appeal tribunal

41. Where, in the opinion of the adjudication officer, an application made under the provisions of section 47(4) of the Administration Act raises a question as to the review of a decision of a medical appeal tribunal and, by virtue of section 47(7) of that Act, such a decision may not be reviewed without the leave of a medical appeal tribunal, the adjudication officer shall submit the application to a medical appeal tribunal so that such tribunal may consider whether such leave shall be granted and shall not refer the question to an adjudicating medical authority with a view to review of that decision unless the medical appeal tribunal grant such leave.

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

42.—(1) Subject to the following provisions of this regulation the provisions of these Regulations apply for the disposal by a medical 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 medical appeal tribunal.

(2) If, on appeal from the medical appeal tribunal to him, the Commissioner has decided that the decision of the medical appeal tribunal is not erroneous in point of law, the medical appeal tribunal need not hold a hearing for the purpose of confirming its decision.

(3) If the case is remitted to the medical appeal tribunal following an appeal to the Commissioner in which it was decided that the decision of the medical 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.

PART IV

PROVISIONS RELATING TO PARTICULAR BENEFITS OR PROCEDURES

SECTION A—

PRESCRIBED DISEASES

Construction of Section A

43.—(1) Regulation 34 applies for the construction of this Section as it applies for the construction of Section E of Part III.

(2) Except as provided in this Section any reference in Part II of the Administration Act or in these Regulations to the relevant accident shall be construed as a reference to the relevant disease and any reference to the date of the relevant accident shall be construed as a reference to the date of onset of the relevant disease.

(3) In the following provisions of this Section any question arising in connection with a claim for or award of disablement benefit—

- (a) whether any person is suffering or has suffered from a prescribed disease, is referred to as a diagnosis question;
- (b) whether a prescribed disease has, in fact, been contracted afresh in a case where that question arises under the provisions of regulation 7 or 8 of the Prescribed Diseases Regulations is referred to as a recrudescence question.

Application of Part II of the Administration Act and of these Regulations

44.—(1) Subject to regulation 52 (review on ground of unforeseen aggravation) the provisions of section 47(5) of the Administration Act (effect of decisions as to a loss of faculty) and of section 44 of that Act (declaration that an accident is an industrial accident) shall not apply in relation to prescribed diseases.

(2) The provisions of—

- (a) Part II of the Administration Act, subject to the provisions of this Section and of Schedule 3; and
- (b) these Regulations, subject, in the case of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations, to the provisions of Part V of those Regulations, shall apply for the determination of any question arising in connection with a claim for benefit under sections 108, 109 and 110 of the Contributions and Benefits Act in respect of a prescribed disease.

Reference of diagnosis and recrudescence questions for medical report

45.—(1) Subject to paragraph (2), if a diagnosis or recrudescence question arises in any case, the adjudication officer shall forthwith refer that question for report to one or more medical practitioners

who, in the case of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations shall be a specially qualified adjudicating medical practitioner or practitioners and shall have power, if he or they consider it to be necessary, to do any or all of the following, namely—

- (a) to make or cause to be made a radiological examination of the person's lungs;
- (b) to obtain the report of a radiologist or other physician on the case;
- (c) to make or cause to be made serological or lung function tests or such other tests as he or they consider necessary;
- (d) to obtain reports upon the results of such tests.

(2) The adjudication officer may determine a diagnosis or recrudescence question without referring it as provided by paragraph (1) if he is satisfied that such reference can be dispensed with having regard to—

- (a) a medical report signed by a medical practitioner on the staff of a hospital at which the claimant is receiving or has received treatment for a condition due to a prescribed disease, or by a medical officer engaged at the place of work where the claimant is or was employed; or
- (b) the decision on any similar diagnosis or recrudescence question which has been determined on the consideration of any previous claim or question arising in respect of the same disease suffered by the same person (including the date and terms of any medical reports on which such previous decision was based and of any medical certificates submitted by the claimant),

so however that a reference for report shall not be dispensed with on the grounds specified in subparagraph (a) of this paragraph except where a diagnosis question is determined in favour of the claimant or where a recrudescence question arises in connection with a diagnosis question which has been so determined under this regulation.

(3) The adjudication officer may, if he is satisfied that a reference for report as provided in paragraph (1) may be dispensed with on any of the grounds specified in paragraph (2), refer for the decision of a special medical board or a specially qualified adjudicating medical practitioner any diagnosis or recrudescence question in connection with a claim in respect of each of the diseases numbered B6, C15, C17, C18 and C22(b), without having referred such a question for report.

(4) If the adjudication officer is of the opinion that the claim or question submitted to him or any part thereof can be disposed of without determining any diagnosis or recrudescence question, he may make an award or determine that an award cannot be made or may determine the question submitted to him accordingly without referring such diagnosis or recrudescence question for report as aforesaid or before so referring it.

(5) Where the assessed extent of a person's disablement in respect of a prescribed disease amounts to one per cent. or more and during the period taken into account by that assessment the beneficiary either—

- (a) applies for a review of such assessment; or
- (b) makes a further claim for disablement benefit in respect of a fresh attack of the disease;

any recrudescence question arising on such application or further claim instead of being referred for report as aforesaid shall be referred for decision to an adjudicating medical authority together with any disablement question which arises.

(6) The provisions of this regulation apply to an appeal tribunal as they apply to an adjudication officer with the modification that an appeal tribunal, instead of itself referring a diagnosis or recrudescence question to a medical practitioner in accordance with paragraph (1), shall direct the adjudication officer to refer it to an adjudicating medical authority in accordance with regulation 46.

Procedure on receipt of medical report

46.—(1) If a diagnosis or recrudescence question has been referred as provided by regulation 45(1), the adjudication officer shall, subject to the provisions of paragraph (4), proceed with the consideration of that question as soon as possible after he has received the report of the medical practitioner or practitioners to whom it was so referred.

(2) If the question so referred was a diagnosis question, then, subject to regulation 47(1), the adjudication officer may himself determine the question or refer it to an adjudicating medical authority for decision.

(3) If the question so referred was a recrudescence question, then, subject to regulation 47, the adjudication officer—

- (a) if he is satisfied having regard to the report that the disease ought to be treated as having been, in fact, contracted afresh, shall so treat it and shall determine the question accordingly;
- (b) if he is not so satisfied, shall treat the disease as a recrudescence of the previous attack or as not having developed on or after 5th July 1948, as the case may require, and shall determine the question accordingly.

(4) Subject to the provisions of these Regulations, the provisions of sections 22, 25 to 29, 37 and 69 of the Administration Act shall apply as if a diagnosis or recrudescence question were a question such as is referred to in section 37(1) of that Act and as if references in those sections to the determination of, or to the review of the decision of, such a question included references to the determination of, or to the review of the decision of, a diagnosis or recrudescence question under these Regulations.

Restriction of adjudication officer's power to determine diagnosis and recrudescence questions

47.—(1) If, on the consideration of a diagnosis or recrudescence question, the adjudication officer is of the opinion that there arises a disablement question, he shall not determine the diagnosis or recrudescence question but shall refer it to an adjudicating medical authority together with the disablement question.

(2) If a diagnosis question is referred to an adjudicating medical authority under the provisions of regulations 46 or 48, the adjudication officer shall not himself determine any recrudescence question which arises in connection therewith but shall refer it to the adjudicating medical authority together with the diagnosis question.

Appeal against decision of adjudication officer

48.—(1) Where, under the provisions of regulation 45 or 46, an adjudication officer has decided a diagnosis question or a recrudescence question the claimant shall be notified in writing of the decision, of the reasons for it and of his right of appeal under paragraph (2).

(2) A claimant may appeal any decision mentioned in paragraph (1) to an adjudicating medical authority in accordance with the provisions of regulation 3 and Schedule 2.

(3) If an appeal is made against a decision on a recrudescence question, the adjudication officer shall also refer the diagnosis question, and the adjudicating medical authority may confirm, reverse or vary the decision on that question as on an appeal.

(4) If a diagnosis or recrudescence question is referred to an adjudicating medical authority to which there is also referred a disablement question and the decision of the adjudicating medical authority on the diagnosis or recrudescence question enables the case to be decided adversely to the claimant, the adjudicating medical authority shall not determine the disablement question.

Appeal or reference to a medical appeal tribunal

49.—(1) A claimant may appeal the decision of an adjudicating medical authority on a diagnosis or recrudescence question and in that event the case shall be referred to a medical appeal tribunal.

(2) If the adjudication officer is of the opinion, or if the Secretary of State notifies the adjudication officer that he is of the opinion, that any decision of an adjudicating medical authority on a diagnosis or recrudescence question ought to be considered by a medical appeal tribunal, the adjudication officer shall refer the case to a medical appeal tribunal for its consideration and the tribunal may confirm, reverse or vary the decision as on an appeal.

Powers of medical appeal tribunal upon determining the question referred

50. Where a diagnosis or recrudescence question is referred to a medical appeal tribunal that tribunal, upon determining the question referred—

- (a) may proceed to determine any diagnosis or recrudescence question which arises in connection therewith and any disablement question which arises in consequence thereof and where a decision on any such question has been given by an adjudicating medical authority, may confirm, reverse or vary that decision; and
- (b) if it is determined that the disease is a recrudescence of an attack to which an earlier decision of an adjudicating medical authority or a medical appeal tribunal relates, may proceed to review that earlier decision under the provisions of section 47(4) of the Administration Act.

Review of previous assessment following recrudescence decision

51. Where, by reason of the provisions of regulation 7(4) of the Prescribed Diseases Regulations, the decision on a recrudescence question necessitates the review of a previous assessment of disablement, the adjudicating medical authority may review such previous assessment, as provided by section 47 of the Administration Act, so however that, in any such case, notwithstanding the provisions of subsection (7) of that section, a previous assessment may be reviewed as provided by this regulation at any time without the leave of a medical appeal tribunal.

Review on ground of unforeseen aggravation

52. Section 47(8) of the Administration Act shall have effect as if—

- (a) after the words“this section” there are inserted the words“and of subsection 8A”; and
- (b) the following subsection is inserted after subsection (8)—

“(8A) Where—

- (a) a final assessment of the extent of disablement resulting from a loss of faculty has been made for a period limited by reference to a definite date, and
- (b) an application for review on the ground that there has been unforeseen aggravation of the results of the relevant disease is made within a period of 3 months immediately following that date,

the adjudicating medical authority shall determine the extent of disablement resulting from the relevant loss of faculty both for the period mentioned in paragraph (a) and any time after that period.”

Review of decision on diagnosis or recrudescence question

53.—(1) Any decision on a diagnosis or recrudescence question of an adjudication officer, adjudicating medical authority or medical appeal tribunal may be reviewed at any time by a medical

board if they are satisfied by fresh evidence that the decision was given in ignorance of, or was based on mistake as to, some material fact, so however that a decision of a medical appeal tribunal on a diagnosis or recrudescence question shall not be reviewed by a medical board without the leave of a medical appeal tribunal.

(2) A question may be raised with a view to the review of any decision on a diagnosis or recrudescence question by means of an application in writing to an adjudication officer, and on receipt of such application the adjudication officer shall proceed to refer such question to a medical board, so however that where in the opinion of the adjudication officer such application raises a question as to the review of a decision of a medical appeal tribunal on a diagnosis or recrudescence question, the adjudication officer shall submit the application to a medical appeal tribunal so that such tribunal may consider whether leave shall be granted and shall not refer the question to a medical board unless the medical appeal tribunal grant leave.

(3) Subject to the foregoing provisions of this regulation, a medical board may deal with a case on review in any manner in which it could deal with it on an original reference to it, and regulation 49 shall apply to a decision of a medical board in connection with an application for review as it applies to a decision on an original reference to it.

Additional provisions relating to the powers and decisions of specially qualified adjudicating medical practitioners and special medical boards

54.—(1) Specially qualified adjudicating medical practitioners and special medical boards shall have power to make or cause to be made a radiological examination of the lungs of the claimant and to obtain the report of a radiologist on the case, and to make or cause to be made serological, lung function and such other tests as they consider necessary and to obtain reports upon the results of such tests.

(2) Where in respect of a claim for disablement benefit by reason of prescribed disease D1 (pneumoconiosis) or D2 (byssinosis) a specially qualified adjudicating medical practitioner, special medical board or a medical appeal tribunal gives a decision under the foregoing provisions of these Regulations that the claimant is or was suffering from one or other of those diseases—

- (a) that practitioner, board or tribunal may, on the evidence before him or it at the time of that decision, determine also the date from which the claimant has or had suffered from that disease; and
- (b) notwithstanding the provisions of section 60(1) of the Administration Act (finality of decisions), in making that determination, the practitioner, board or tribunal shall not be bound by any previous decision of an adjudication officer, specially qualified adjudicating medical practitioner or special medical board that the claimant was not suffering from that disease; and
- (c) any such previous decision, in so far as it is inconsistent with the said determination, shall cease to have effect.

SECTION B—

INCOME SUPPORT

Notification of decisions in income support cases

55.—(1) Subject to paragraphs (2) to (4) the decision of an adjudication officer on any claim or question relating to income support shall be notified in writing to the claimant who shall at the same time be notified of his right to request a statement of the reasons for that decision and of his right of appeal to an appeal tribunal.

(2) Where, under arrangements made by the Secretary of State either throughout or in any part of Great Britain, income support is payable together with another benefit under the Contributions and Benefits Act, notice of the aggregate amount so payable shall be notice for the purpose of paragraph (1).

(3) Written notice shall not be required of a determination awarding benefit which is implemented by a cash payment if in all the circumstances it would be impracticable to give such a notice.

(4) Written notice shall not be required of a determination terminating entitlement to income support if the reason for the termination is already known to the claimant or it is otherwise reasonable in the circumstances not to give such notice.

(5) So far as may be practicable, and subject to paragraph (6), where a claimant is notified of a decision under paragraph (1) or (2) the Secretary of State shall also give or send him a written notice of assessment showing—

- (a) the total amounts of the personal allowances, family premium, other premiums and housing costs determined under Part IV of the Income Support Regulations as are appropriate in his case; and
- (b) the income taken into account; and
- (c) any personal expenses addition, special transitional addition and transitional addition payable under the Income Support (Transitional) Regulations 1987(16).

(6) Paragraph (5) shall not apply to any determination—

- (a) that income support is not payable for any reason other than that the claimant's income exceeds the applicable amount;
- (b) made on review under regulation 63, either under paragraph (2) of that regulation or where in other cases under that regulation the Secretary of State considers a written notice of assessment unnecessary;
- (c) in respect of a claimant to whom section 127 of the Contributions and Benefits Act (return to work after trade dispute) applies.

(7) If, within the time limited by regulation 3 and Schedule 2 for the bringing of an appeal against an adjudication officer's decision, the claimant requests a statement of the reasons for that decision he shall be given such a statement in writing and shall again be informed of his right of appeal.

Income support and social fund questions not immediately determinable

56.—(1) Where on consideration of a claim or question relating to income support or to payment of maternity expenses from the social fund under Part VIII of the Contributions and Benefits Act it appears to an adjudication officer that the claimant's entitlement to, or the rate or amount of, such benefit depends on the determination of—

- (a) the question as to what housing costs are to be included in the claimant's applicable amount by virtue of regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, the Income Support Regulations (applicable amounts) and the adjudication officer is satisfied that not all of those housing costs can be immediately determined, he shall proceed to determine the claim or question on the assumption that the housing costs to be included in the claimant's applicable amount are those that can be immediately determined;
- (b) any of the questions mentioned in paragraph (3), and he is satisfied that the question cannot be immediately determined, he shall proceed to determine the claim or question on the assumption that the determination of the question so mentioned will be adverse to the claimant.

(2) Without prejudice to the power of an adjudication officer to refer any claim or question to an appeal tribunal under section 21(2) of the Administration Act and notwithstanding the provisions of section 22 of that Act, on an appeal to an appeal tribunal in any case where the adjudication officer has applied the provisions of paragraph (1) in relation to any of the questions mentioned or referred to in that paragraph, the tribunal shall not determine any such question until it has been determined by an adjudication officer.

(3) The questions referred to in paragraphs (1) and (2) are—

- (a) whether in relation to any person the applicable amount falls to be reduced or disregarded to any extent by virtue of section 126(3) of the Contributions and Benefits Act (persons affected by trade disputes);
- (b) whether by virtue of regulation 9(1) of the Income Support Regulations (persons treated as available for employment) a person is to be treated as available for employment and whether by virtue of regulation 10(1)(b), (d) or (g) of those Regulations he is not to be so treated;
- (c) whether for the purposes of regulation 10(1)(a) of the Income Support Regulations (circumstances in which claimants are not to be treated as available for employment) after a situation in any employment has been properly notified to a claimant as vacant or about to become vacant he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him;
- (d) whether regulation 10A of the Income Support Regulations⁽¹⁷⁾ (circumstances in which a claimant is not required to actively seek employment or is treated as actively seeking employment) applies by virtue of paragraph (3) or (4) of that regulation;
- (e) whether for the purposes of regulation 12 of the Income Support Regulations (relevant education) a person is by virtue of that regulation to be treated as receiving relevant education;
- (f) whether in relation to any claimant the applicable amount includes severe disability premium by virtue of regulation 17(1)(d) or 18(1)(e) of, and paragraph 13 of Schedule 2 to, the Income Support Regulations (applicable amounts);
- (g) whether regulation 22 of the Income Support Regulations (reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification) applies to a person by virtue of paragraph (4)(c)(iii) of that regulation and, if so, the period of its application by virtue of paragraph (6)(c) of that regulation.

SECTION C—

REVIEW OF DECISIONS

Date from which revised decision has effect on a review

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

(2) This paragraph applies to a review under sections 25(1)(a), 30(2)(a) and (4) and 35(1)(a) of the Administration Act (review for error of fact) of any decision, whether that decision was made before or after the coming into force of this regulation, where the reviewing authority, that is to say the adjudication officer or, as the case may be, the appeal tribunal, is satisfied that—

(17) Regulation 10A was inserted by S.I. 1989/1323 and amended by S.I. 1992/2804.

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

(3) This paragraph applies to a review under sections 25(2) and 30(2)(d) of the Administration Act (review for error of law) of any decision, whether that decision was made before or after the coming into force of this regulation, where the adjudication officer or, as the case may be, the appeal tribunal, is satisfied that the adjudication officer, in giving the decision under review, overlooked or misconstrued either—

- (a) some provision in an Act of Parliament or in any Order or Regulations; or
- (b) a determination of the Commissioner or the court, which, had he taken it properly into account, would have resulted in a higher award of benefit or, where no award was made, an award of benefit.

(4) The following provisions of this Section, including regulation 63, are subject to the provisions of this regulation.

(5) In this regulation “court” has the same meaning as it has in section 68 of the Administration Act.

Review of decisions in cases to which section 69(1) of the Administration Act applies

58. In any case to which section 69(1) of the Administration Act applies, the decision given on review shall have effect from the date of the relevant determination within the meaning of that subsection whether the decision which is being reviewed was made before, on or after 9th March 1992.

Review of decisions involving payment or increase of benefit other than industrial injuries benefit, disability working allowance, income support or family credit

59.—(1) Where on a review a decision relating to benefit other than industrial injuries benefit, disability working allowance, income support or family credit is revised so as to make benefit payable, or to increase the rate of benefit, then subject to the following provisions of this regulation, the decision given on the review shall have effect from such date as may be specified in the decision, being a date not earlier than—

- (a) in the case of unemployment benefit and maternity allowance, the date of the application for the review;
- (b) in the case of incapacity benefit or severe disablement allowance the date 2 weeks before the date of the application for the review;
- (c) in the case of widow’s benefit under sections 36 to 39 of the Contributions and Benefits Act (and benefit under section 78(9) of that Act corresponding to a widow’s pension or

a widowed mother's allowance), an invalid care allowance, a child's special allowance, a guardian's allowance, a retirement pension of any category or an age addition, the date 3 months before the date of the application for the review;

- (d) in the case of child benefit, the date 12 months before the beginning of the week in which the application for review is made;
- (e) in the case of attendance allowance or disability living allowance, where the decision is reviewed—
 - (i) under section 30(1) of the Administration Act and paragraph (ii) of this sub-paragraph does not apply, the date of claim,
 - (ii) under section 30(1) of the Administration Act as that subsection is applied by sections 31(2) and 35(8) of that Act, 3 months before the date of the application for review made under section 30(2) or (4) of that Act which preceded the application for review under section 30(1) of that Act,
 - (iii) under section 30(2) or (4) or section 35 of that Act, 3 months before the date of the application for review.

(2) Where in any case to which paragraph (1) applies (other than child benefit) a claimant proves—

- (a) that on a date earlier than the date on which the application for review was made, he was (apart from satisfying the condition of making a claim for it) entitled to benefit; and
- (b) that throughout the period between the earlier date and the date on which the application for review was made, there was good cause for delay in making the application; subject to paragraphs (3) to (5) he shall not be disqualified by virtue of paragraph (1) for receiving any benefit to which he would have been entitled in respect of that period.

(3) Except in a case to which regulation 57(2) or (3) or regulation 58 applies, no sum on account of benefit shall, in a case to which paragraph (2) applies, be paid to any person in respect of any part of the period referred to in sub-paragraph (b) of that paragraph earlier than 12 months before the date on which the application for review was made, so however that the foregoing provisions of this paragraph shall not apply to—

- (a) any case where it is certified in the decision on review that the original decision was revised by reason only of one or more of the following—
 - (i) a matter specified in section 17(1)(b) of the Administration Act (contributions and earnings factor); or
 - (ii) a matter relating to the number of days in respect of which the claimant has been entitled or deemed to be entitled to short-term incapacity benefit;
- (b) the review of a decision disallowing a claim for sickness benefit, invalidity benefit, severe disablement allowance or unemployment benefit in so far as it is a decision which, under the provisions of regulations made under section 5(1)(f) of the Administration Act, has been treated as a decision disallowing a further claim for any of those benefits.

(4) In any case, other than a case to which paragraph (5) applies, in which the review to which the foregoing provisions of this regulation relate was based on a material change of circumstances subsequent to the date from which the original decision took effect, it shall not have effect for any period before the date declared by the adjudicating authority making the review to be the date on which that change took place.

(5) 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.
- (6) Paragraph (5) applies only to a relevant change of circumstances which relates to a deterioration in a person's physical or mental condition.
- (7) 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 30(1) of the Administration Act; or
 - (b) a further claim for an attendance allowance or a disability living allowance is made within the period prescribed under section 30(1) of the Administration Act and is accordingly treated as an application for review in accordance with section 30(13) of that 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 (8).
- (8) The date referred to in paragraph (7) 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 whichever is appropriate.
- (9) For the purposes of this regulation, where a decision is reviewed at the instance of an adjudication officer under section 25(1) or (2) of the Administration Act, the date on which the adjudication officer decided to make that review shall be deemed to be the date of the application for the review.
- (10) In any case to which paragraph (1) applies, the decision on review shall not in any event have effect for any period before the date on which the original decision took effect or would have taken effect if any award had been made.

Review of decisions involving payment or increase of industrial injuries benefit

60.—(1) Except in a case to which regulation 57(2) or (3) or regulation 58 applies, where on a review a decision of an adjudication officer, an appeal tribunal or a Commissioner is revised so as to make industrial injuries benefit payable or to increase the rate of such benefit, the decision given on review shall, subject to paragraph (2), have effect as from the date of the application for the review or from such earlier date as appears to the person or tribunal determining the review to be reasonable in the circumstances.

- (2) Paragraph (1)—
- (a) shall not permit benefit to become payable from a date earlier than the earliest date from which it could have been payable had it been awarded in the decision being reviewed;
 - (b) in the case of a review made by virtue of section 60(5)(a) of the Administration Act (which permits the review of a decision given before the passing of the National Insurance Act 1972⁽¹⁸⁾ that a claimant was not entitled to industrial death benefit) shall not permit benefit to become payable for any period earlier than 9th August 1972.

(3) Where a decision is reviewed at the instance of an adjudication officer under section 25(1) of the Administration Act, the date on which it was first decided by the adjudication officer that the decision should be reviewed shall be treated for the purposes of this regulation as the date of application for review.

Review of medical decisions on grounds of ignorance of or mistake as to a material fact

61. A decision of an adjudicating medical authority or a medical appeal tribunal may not be reviewed under section 47(1) of the Administration Act unless the adjudicating medical authority is satisfied as mentioned in that subsection by fresh evidence.

Period to be taken into account by assessments revised on ground of unforeseen aggravation

62. On review of any assessment under section 47(4) of the Administration Act (review on ground of unforeseen aggravation) the period to be taken into account by any revised assessment may include any period not exceeding 3 months before—

- (a) if the review was in consequence of an application by a claimant, or a person acting on his behalf, the date of that application; or
- (b) if the review was in consequence of a decision on a recrudescence question, within the meaning of regulation 43(3)(b) given under regulation 7(4) of the Prescribed Diseases Regulations (recrudescence of a prescribed disease), the date of the claim on which that decision was given, if the medical board are satisfied that throughout that period there has been unforeseen aggravation of the results of the relevant injury since the making of the assessment under review.

Review in income support cases

63.—(1) Except in a case to which regulation 57(2) or (3) or regulation 58 applies, a determination on a claim or question relating to income support shall not be revised on review under section 25 of the Administration Act so as to make income support payable or to increase the amount of income support payable in respect of—

- (a) any period which falls more than 12 months before the date on which the review was requested or, where no request is made, the date of the review; or
- (b) any past period which falls within the period of 12 months mentioned in sub-paragraph (a) above and has been followed by termination or interruption of entitlement to income support and—
 - (i) the total amount of the increase would be £5 or less, or
 - (ii) the grounds for review are a material fact or relevant change of circumstances of which the claimant was aware but of which he previously failed to furnish information to the Secretary of State.

(2) Section 159 of the Administration Act (which relates to the effect of alterations in the component rates of income support) shall not apply to any award of income support in force in favour of a person where there is applicable to that person—

- (a) any amount determined in accordance with regulation 17(2) to (7) of the Income Support Regulations(19); or

(19) Relevant amending instruments are S.I. 1988/910, 1989/1678, 1991/387.

- (b) any protected sum determined in accordance with Schedule 3A or 3B of those Regulations(20); or
- (c) any transitional addition, personal expenses addition or special transitional addition applicable under Part II of the Income Support (Transitional) Regulations 1987 (transitional protection)(21).

(3) Where section 159 of the Administration Act does not apply to an award of income support by virtue of paragraph (2), that award may be reviewed by an adjudication officer or, on a reference by him, by an appeal tribunal for the sole purpose of giving effect to any change made by an order under section 150 of the Administration Act.

(4) A determination relating to income support made by an adjudicating authority or a Commissioner shall be reviewed by an adjudication officer or, on a reference by him, by an appeal tribunal where this is necessary to give effect to—

- (a) regulation 22 of the Income Support Regulations (reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification); or
- (b) a determination given on a question to which regulation 56 applies; or
- (c) a change of circumstances to which regulation 14 (reduction and termination of transitional and personal expenses addition) and regulation 15 (special transitional addition) of the Income Support (Transitional) Regulations 1987(22) apply.

(5) Where a claimant in receipt of income support, other than a claimant to whom Part II of Schedule 4 to the Income Support Regulations (23) applies, lives in a nursing home or residential care home and he is absent from the home for a period of less than one week, that absence shall not be treated as a relevant change of circumstances for the purposes of section 25(1)(b) and (c) of the Administration Act.

(6) In paragraph (5), “nursing home” and “residential care home” have the same meanings as they have in regulation 19 of the Income Support Regulations(24).

Repayment of student loan not a change of circumstances

64. The repayment of a loan to which regulation 66A of the Income Support Regulations(25) or regulation 42A of the Family Credit (General) Regulations 1987(26) (treatment of student loans) applies shall not be treated as a relevant change of circumstances for the purposes of section 25(1) (b) and (c) of the Administration Act.

Review in family credit cases

65. Where a review under section 25(1)(a) of the Administration Act of a decision relating to family credit arises from a disclosure of a material fact of which the person who claimed family credit 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 family credit or an increase in the amount of family credit payable, such new award or increase

(20) Schedule 3A was inserted by S.I. 1988/1445; relevant amending instruments are S.I. 1988/2022, 1989/534, 1648, 1990/547, 2324, 1991/1559, 1992/1326. Schedule 3B was inserted by S.I. 1989/534; relevant amending instruments are S.I. 1989/1678, 1990/547, 2324, 1991/1559, 1992/1326.

(21) S.I. 1987/1969; relevant amending instruments are S.I. 1988/521, 670, 1989/1626, 2340, 1990/2324, 1991/387, 1600, 1992/1326.

(22) S.I. 1987/1969; relevant amending instruments are S.I. 1988/521, 670, 1989/1626, 2340, 1990/2324, 1991/387, 1600, 1992/1326.

(23) Relevant amending instruments are S.I. 1988/663, 1991/1559, 1992/468.

(24) Relevant amending instruments are S.I. 1988/663, 1445, 2022, 1989/1678, 1991/1033, 1992/3147, 1993/2119.

(25) Regulation 66A was inserted by S.I. 1990/1549; relevant amending instruments are S.I. 1991/236, 1559.

(26) S.I. 1987/1973; relevant amending instruments are S.I. 1990/1549, 1991/1520.

shall not be payable in respect of any period earlier than 12 months before the date on which that person first furnished that information.

Review in disability working allowance cases

- 66.**—(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 30(1) of the Administration Act; or
 - (b) a further claim for disability working allowance is made within the period prescribed under section 30(1) of the Administration Act and is accordingly treated as an application for review in accordance with section 30(13) of that 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 30(1) or (5)(a) or section 35(3)(a) of the Administration 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.

Review in social fund maternity, funeral or heating expenses cases

67. Except in a case to which regulation 57(2) or (3) or regulation 58 applies, a determination on a claim or question relating to maternity or funeral expenses or expenses for heating which appear to the Secretary of State to have been or to be likely to be incurred in cold weather out of the social fund under Part VIII of the Contributions and Benefits Act and section 66 of the Administration Act shall not be revised on review under sections 25 to 29 and 69 of the Administration Act so as to make such expenses payable or to increase the amount of such expenses payable in respect of a determination of a claim for such expenses made more than 12 months before the date on which the review was requested or, where no request is made, the date of review.

PART V

TRANSITIONAL PROVISIONS AND REVOCATIONS

Transitional provisions

68.—(1) The Social Security (Adjudication) Regulations 1986⁽²⁷⁾ as originally made, shall continue to apply to the adjudication of any claim or question under the National Assistance Act 1948⁽²⁸⁾ or the Supplementary Benefit Act 1966⁽²⁹⁾ as they apply to a corresponding claim or question under the Supplementary Benefits Act 1976⁽³⁰⁾ and to the adjudication of any claim or question under the Supplementary Benefits Act 1976 as if the present Regulations had not been made.

⁽²⁷⁾ S.I. 1986/2218; the Regulations as originally made were saved with respect to the adjudication of claims and questions under the Supplementary Benefits Act 1976 by S.I. 1987/1970 regulation 13.

⁽²⁸⁾ 1948 c. 29.

⁽²⁹⁾ 1966 c. 20.

⁽³⁰⁾ 1976 c. 71.

(2) Anything done, begun or deemed to be done or begun under the Social Security (Adjudication) Regulations 1986 shall be deemed to have been done or continued under the corresponding provisions of these Regulations.

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

(4) Nothing in paragraphs (2) and (3) shall be taken as affecting the general application of the rules for the construction of Acts of Parliament contained in sections 15 to 17 of the Interpretation Act 1978⁽³¹⁾ (repealing enactments) with regard to the effect of revocations.

(5) Without prejudice to the powers conferred on the Lord Chancellor or the Lord President of the Court of Session by section 6 of the Tribunals and Inquiries Act 1992⁽³²⁾ or on the Secretary of State or the President by Part II of and Schedule 2 to the Administration Act, any person who, immediately before the coming into force of section 25 of and Schedule 8 to the Health and Social Services and Social Security Adjudication Act 1983⁽³³⁾, held a subsisting appointment as—

- (a) a member of any of the panels of persons constituted under the said section 6 from which were selected chairmen of National Insurance Local Tribunals (constituted under section 97(2) of the Social Security Act 1975) or, as the case may be, of Supplementary Benefit Appeal Tribunals (constituted under Schedule 4 to the Supplementary Benefits Act) shall be deemed to have been appointed to the panel from which chairmen of appeal tribunals are selected for a period corresponding to that of his subsisting appointment;
- (b) a member of either of the tribunal membership panels mentioned in section 97(2)(a) of the Social Security Act 1975 and paragraph 1(a) of Schedule 4 to the Supplementary Benefits Act (representing employers and earners other than employed earners) shall be deemed to have been appointed to the panel constituted by the President under paragraph 1(4) of Schedule 10 to the 1975 Act for a period corresponding to that of his subsisting appointment;
- (c) a member of either of the tribunal membership panels mentioned in section 97(2)(b) of the Social Security Act 1975 and paragraph 1(b) of Schedule 4 to the Supplementary Benefits Act (representing employed earners) shall be deemed to have been appointed to the panel constituted by the President under paragraph 1(3) of Schedule 10 to the 1975 Act for a period corresponding to that of his subsisting appointment;
- (d) a clerk to any National Insurance Local Tribunal or Supplementary Benefit Appeal Tribunal shall be deemed to have been assigned by the President as a clerk to the appeal tribunal for the area in question;
- (e) a member of a pneumoconiosis medical panel (under regulation 49 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1980⁽³⁴⁾) shall be deemed to have been appointed as a specially qualified adjudicating medical practitioner.

Revocations

69. The Regulations set out in column (1) of Schedule 4 are revoked to the extent mentioned in column (3) of that Schedule.

⁽³¹⁾ 1978 c. 30.

⁽³²⁾ 1992 c. 53.

⁽³³⁾ 1983 c. 41.

⁽³⁴⁾ S.I. 1980/377.

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

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

Department of Social Security
13th July 1995

Roger Evans
Parliamentary Under-Secretary of State,

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

SCHEDULE 1

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

Column (1)	Column (2)
Social Security Administration Act 1992(35)	section 17(3) section 20(3)(b) section 22(2) and (4) section 23(9) and (10) section 26(3) section 27(1) section 30 section 31 section 32(8) section 33 section 34(4) section 35(10) section 45 section 46(2) and (3) section 47(3), (7) and (9) section 48(3) and (4) section 49 section 50(6) section 55(1) section 58 section 59 section 61(1), (2) and (3) section 62(1) and (2) section 70(1) section 159 section 189 section 190(3) section 191 Schedule 3 Schedule 10, Paragraph 3

SCHEDULE 2

Regulation 3

TIME LIMITS FOR MAKING APPLICATIONS, APPEALS OR REFERENCES

Column (1) Application, appeal or reference	Column (2) Appropriate Office	Column (3) Specified time
1. Appeal to a medical board from an adjudication officer's determination of a diagnosis or recrudescence question (regulation 48).	A local office.	3 months beginning with the date when notice in writing of the decision was given to the appellant.
2. Appeal to a medical appeal tribunal from a decision of an adjudicating medical authority, as defined in regulation 34 (section 46(2) of the Administration Act).	A local office.	3 months beginning with the date when notice in writing of the decision was given to the appellant.
3. Reference by the Secretary of State notifying the adjudication officer that a decision of an adjudicating medical practitioner ought to be considered by a medical appeal tribunal (section 46(3) of the Administration Act).	A local office.	3 months beginning with the date of the decision of the adjudicating medical practitioner.
4. Appeal to an appeal tribunal from a decision of an adjudicating officer	A local office.	3 months beginning with the date when notice of the decision was given to the appellant.

(35) 1992 c. 5.

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

Column (1) Application, appeal or reference	Column (2) Appropriate Office	Column (3) Specified time
(section 22(1) of the Administration Act).		
5. Appeal to a disability appeal tribunal from a decision on review of an adjudication officer under section 30(1) of the Administration Act.	A local office.	3 months beginning with the date when notice in writing of the decision was given to the appellant.
6. Appeal to an appeal tribunal from a decision on a review of an adjudication officer under section 30(1) of the Administration Act.	A local office.	3 months beginning with the date when notice in writing of the decision was given to the appellant.
7. Application to the chairman for leave to appeal to a Commissioner from the decision of an appeal tribunal (regulation 24(1)).	The office of the clerk to the appeal tribunal.	3 months beginning with the date when a copy of the record of the decision was given to the applicant.
8. Application to the chairman for leave to appeal to a Commissioner from the decision of a medical appeal tribunal (regulation 39(1)).	The office of the clerk to the medical appeal tribunal.	3 months beginning with the date when a copy of the record of the decision was given to the applicant.
9. Application to the chairman for leave to appeal to a Commissioner from the decision of a disability appeal tribunal (regulation 32(1)).	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.
10. Application to the Secretary of State with a view to a review under section 19(1) of the Administration Act of a decision under section 17(1) of that Act (regulation 16(1)).	The office of the Department of Social Security or the Department for Education and Employment from which notice of the decision was issued.	3 months beginning with the date when the Secretary of State gave the applicant notice in writing of the decision.
11. Application to an adjudicating authority to set aside decision (regulation 10(2)).	A local office of the Department of Social Security or, in the case of unemployment benefit, either at such an office or at a local office of the Department for Education and Employment or, in any case, at the office of the authority who gave the decision.	3 months beginning with the date when notice in writing of the decision was given to the applicant.

SCHEDULE 3

Regulation 44(2)

MODIFICATION OF PART II OF THE ADMINISTRATION
ACT IN ITS APPLICATION TO BENEFIT AND CLAIMS AND
QUESTIONS TO WHICH PART IV OF THESE REGULATIONS APPLY

1. Section 60(4) of the Administration Act shall have effect as if for the words “an accident” there were substituted the words “a prescribed disease”; as if for the words “an injury resulted in whole or in part from the accident” there were substituted the words “a person suffered from a prescribed disease”; as if for the words “that accident” there were substituted the words “that disease”; and as if for the words “the injury did so result” there were substituted the words “the person did so suffer”.

2. There shall be included in the questions to be determined under the Administration Act any question—

- (a) whether a person is suffering or has suffered from a prescribed disease or injury;
- (b) whether a prescribed disease or injury, suffered by a person who has previously been awarded benefit under the National Insurance (Industrial Injuries) Act 1946⁽³⁶⁾, under the National Insurance (Industrial Injuries) Act 1965⁽³⁷⁾, under the Social Security Act 1975⁽³⁸⁾ or under the Acts or who is or has been in receipt of compensation under the Workmen’s Compensation Acts 1925 to 1945 or under any contracting out scheme duly certified thereunder in respect of the same disease or injury, has been contracted or received afresh (if and in so far as regulations made under sections 108, 109 or 110 of the Contributions and Benefits Act or section 62(1) of the Administration Act necessitate the determination of that question); which shall, where the question arises in connection with a claim for or award of sickness benefit made by virtue of section 102 of the Contributions and Benefits Act or disablement benefit, be determined as provided by regulations, by an adjudication officer in the light of medical advice or by a medical board or a medical appeal tribunal, so however that no appeal shall lie under the provisions of section 22 or 23 of the Administration Act from a decision of an adjudication officer on any such question.

SCHEDULE 4

Regulation 69

REVOCATIONS

(1) Regulations Revoked	(2) References	(3) Extent of Revocation
The Social Security (Adjudication) Regulations 1986	S.I. 1986/2218	The whole of the Regulations, except for the purposes of regulation 68(2).
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1987	S.I. 1987/335	Regulation 5.
The Social Security (Adjudication) Amendment Regulations 1987	S.I. 1987/1424	The whole of the Regulations.

⁽³⁶⁾ 1946 c. 62.

⁽³⁷⁾ 1965 c. 52.

⁽³⁸⁾ 1975 c. 14.

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

(1) Regulations Revoked	(2) References	(3) Extent of Revocation
The Social Security (Adjudication) Amendment (No. 2) Regulations 1987	S.I. 1987/1970	The whole of the Regulations.
The Social Security (Common Provisions) Miscellaneous Amendment Regulations 1988	S.I. 1988/1725	Regulation 2.
The Social Security (Adjudication) Amendment Regulations 1989	S.I. 1989/1689	The whole of the Regulations.
The Social Security (Adjudication) Amendment Regulations 1990	S.I. 1990/603	The whole of the Regulations.
The Social Security (Mobility Allowance and Adjudication) Amendment Regulations 1991	S.I. 1991/706	Regulation 3.
The Social Security (Adjudication) Amendment (No. 2) Regulations 1991	S.I. 1991/1950	The whole of the Regulations.
The Social Security (Miscellaneous Provisions) Amendment Regulations 1991	S.I. 1991/2284	Regulations 2 to 4.
The Social Security (Adjudication) Amendment (No. 3) Regulations 1991	S.I. 1991/2889	The whole of the Regulations.
The Social Security (Miscellaneous Provisions) Amendment Regulations 1992	S.I. 1992/247	Regulation 7.
The Social Security (Industrial Injuries and Adjudication) Regulations 1993	S.I. 1993/861	Regulations 2 to 15.
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1993	S.I. 1993/1985	Regulation 8.
The Social Security (Adjudication) Amendment Regulations 1994	S.I. 1994/1082	The whole of the Regulations.
The Social Security (Adjudication) Amendment (No. 2) Regulations 1994	S.I. 1994/2686	The whole of the Regulations.
The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995	S.I. 1995/829	Regulation 19.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These are consolidating Regulations which revoke the Social Security (Adjudication) Regulations 1986 (the 1986 Regulations) and re-enact its provisions taking account of the consolidation effected by the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992 and the changes made by the Social Security (Incapacity for Work) Act 1994.

These Regulations relate to the determination of claims and questions under the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992.

Part I provides for the citation, commencement and interpretation of the Regulations.

Part II and Schedule 2 contain provisions common to the proceedings of all the adjudicating authorities, both medical and non-medical.

Part III makes provision for each of the various adjudicating authorities; Section A for the Secretary of State; Section B for adjudication officers; Section C for social security appeal tribunals; Section D for disability adjudication and Section E for medical adjudication.

Part IV contains provisions relating to particular benefits or procedures; Section A (with Schedule 3) relates to prescribed industrial diseases; Section B to income support; Section C to the review of decisions.

Part V contains transitional provisions and revocations.

These Regulations do not impose a charge on business.