

SCHEDULE 2

Article 3

TRANSITIONAL PROVISIONS

1. In this Schedule—

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations 1995(1);

“the Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(2); and

“legally qualified panel member” has the meaning it bears in regulation 1(3) of the Regulations.

2. A decision which fell to be made before 5th October 1999 (but which was not made before that date)—

(a) on a claim for; or

(b) under or by virtue of Part II of the Administration Act in relation to,

family credit or disability working allowance (other than a decision which fell to be made on appeal) shall be made by the Secretary of State under paragraph (a) or, as the case may be, paragraph (c) of section 8(1).

3.—(1) Any application duly made before 5th October 1999 under Part II of the Administration Act for a review of a decision (other than a decision made on appeal) in relation to family credit or disability working allowance which was not decided before that date shall on or after that date be treated as an application to the Secretary of State—

(a) where the application is made—

(i) within three months of the date on which the applicant was notified of the decision, or within such longer period as may be allowed under sub-paragraph (3) below; and

(ii) other than on the ground of a relevant change of circumstances,

for a revision of that decision under section 9; or

(b) in any other case, for a decision under section 10 to supersede that decision.

(2) Any application duly made before 5th October 1999 under Part II of the Administration Act for a review of a decision in relation to family credit or disability working allowance made on appeal shall on or after that date be treated as an application to the Secretary of State for a decision under section 10 to supersede that decision.

(3) Subject to sub-paragraphs (4) and (5) below, the period of three months specified in sub-paragraph (1)(a) above may be extended where an application for such an extension is made before 5th November 2000 by a claimant or a person acting on his behalf containing—

(a) the grounds on which an extension of time is sought; and

(b) sufficient details of the decision to enable it to be identified.

(4) An application for an extension of time shall not be granted under sub-paragraph (3) above unless the Secretary of State is satisfied that—

(a) it is reasonable to grant that application;

(b) the application for review has merit; and

(c) special circumstances are relevant to the application for extension of time as a result of which it was not practicable for the application for review to be made within three months of the date of the adjudication officer’s decision being notified to the claimant.

(1) S.I.1995/1801; regulations 3 and 10 were amended by S.I. 1996/182 and 2450.

(2) S.I. 1999/991 to which there are amendments not relevant to this Order.

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(5) In deciding whether to grant an extension of time no account shall be taken of the following factors—

- (a) that the claimant or any person acting for him misunderstood or was unaware of the law applicable to his case (including misunderstanding or being unaware of the period specified in sub-paragraph (1)(a) above); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied by the adjudication officer.

(6) Where, by virtue of sub-paragraph (1)(b) or (2) above—

- (a) a decision is made under section 10 which is advantageous to the applicant; and
- (b) the same decision could have been made on a review prior to 5th October 1999,

that decision shall have effect as from the date on which it would have taken effect had the decision been so made.

4.—(1) A decision (other than a decision of a social security appeal tribunal, a disability appeal tribunal or a Commissioner), made before 5th October 1999—

- (a) on a claim for; or
- (b) under or by virtue of Part II of the Administration Act in relation to,

family credit or disability working allowance, shall be treated on or after that date as a decision of the Secretary of State under paragraph (a) or, as the case may be, paragraph (c) of section 8(1).

(2) Where, before 5th October 1999, any person was required to give notice to the claimant of the decision referred to in sub-paragraph (1) above, and such notice has not been given to the claimant before that date, the Secretary of State shall on or after that date give notice to the claimant of that decision.

5.—(1) This paragraph applies where the time limit for making an appeal to a social security appeal tribunal or a disability appeal tribunal in respect of a decision relating to family credit or disability working allowance made before 5th October 1999 has not expired before that date.

(2) Where sub-paragraph (1) above applies, regulation 3 of the Adjudication Regulations as it relates to the period within which an appeal may be made, or an extension of that period, shall, notwithstanding regulation 59 of the Regulations, continue to have effect, subject to the modifications in sub-paragraph (3) below, with respect to any appeal to an appeal tribunal made on or after 5th October 1999 in relation to that decision.

(3) The modifications referred to in sub-paragraph (2) above are as if—

- (a) references to—
 - (i) a chairman or to a person considering the application were references to a legally qualified panel member; and
 - (ii) a tribunal were references to an appeal tribunal constituted under Chapter I of Part I of the Act; and
- (b) in paragraph (3E)(3) for the words from “6 years” to the end of the paragraph there were substituted the words “5th November 2000”.

(4) Notwithstanding regulation 3 of the Regulations, the Secretary of State may revise under section 9 a decision made before 5th October 1999 on a claim for or award of family credit or disability working allowance (other than a decision made on appeal)—

- (a) pursuant to an application for a review of a decision made within three months of the notification of that decision; or

(3) Paragraph (3E) was inserted by S.I. 1996/182.

(b) where an appeal has been duly made against that decision but not determined.

(5) Where a decision is revised pursuant to sub-paragraph (4) above the appeal shall lapse unless the decision as revised is not more advantageous to the appellant than the decision before it was revised.

6. An appeal to a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance which was duly made before 5th October 1999 and which has not been determined before that date shall, without prejudice to Chapter III of Part V of the Regulations, be treated on or after that date as an appeal duly made to an appeal tribunal in relation to a decision of the Secretary of State under section 8.

7.—(1) This paragraph applies where a clerk to a social security appeal tribunal or a disability appeal tribunal has before 5th October 1999 given a direction under regulation 22(1) or, as the case may be, regulation 29(1) of the Adjudication Regulations in connection with an appeal in relation to family credit or disability working allowance to that tribunal, and the notification mentioned in paragraph (1A) of that regulation 22 or paragraph (1A)(4) of that regulation 29 has not been received by the clerk before that date.

(2) A notification in response to such a direction given under that regulation 22(1) or regulation 29(1) shall be—

(a) in writing; and

(b) made within 14 days of receipt of the direction or within such other period as the clerk to an appeal tribunal may direct.

(3) An appeal may be struck out by the clerk to an appeal tribunal where the notification referred to in sub-paragraph (2) above is not received within the period specified in that sub-paragraph.

(4) An appeal which has been struck out in accordance with sub-paragraph (3) above shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Regulations.

(5) An oral hearing of the appeal shall be held where—

(a) a notification is received by the clerk to the appeal tribunal under sub-paragraph (2) above; or

(b) the chairman or, in the case of an appeal tribunal which has only one member, that member is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

8. Where an appeal to a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance has been struck out under regulation 7 of the Adjudication Regulations, a legally qualified panel member may on or after 5th October 1999, on an application made by any party to the proceedings not later than three months from the date of the order under paragraph (1) of that regulation, reinstate the appeal if he is satisfied that—

(a) the applicant did not receive a notice under paragraph (2) of that regulation; and

(b) the conditions in paragraph (2A) of that regulation were not satisfied,

and the appeal shall then be treated as an appeal to an appeal tribunal in relation to a decision of the Secretary of State under section 8.

9. An appeal tribunal shall completely rehear any appeal to a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance which stands adjourned immediately before 5th October 1999.

10. A copy of a statement of—

(4) Regulation 22(1A) and regulation 29(1A) were inserted by S.I. 1996/2450.

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- (a) the reasons for a decision of a social security appeal tribunal or, as the case may be, a disability appeal tribunal in relation to family credit or disability working allowance; and
- (b) its findings on questions of fact material thereto,

shall be supplied to each party to the proceedings before that tribunal, if requested by any such party within 21 days of the date on which notification of that decision was given or sent.

11.—(1) Subject to sub-paragraph (2) below, any decision of a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance shall be treated as a decision of an appeal tribunal made under section 12.

(2) Where sub-paragraph (1) above applies, any application for leave to appeal which is made for the purposes of section 14(10)(a) shall be made no later than three months after the date on which a copy of the statement of the reasons for the decision of the social security appeal tribunal or, as the case may be, the disability appeal tribunal was given or sent to the applicant.

12.—(1) Subject to sub-paragraph (3) below, regulation 10 of the Adjudication Regulations, and regulation 3 of those Regulations in so far as it relates to that regulation 10, shall, notwithstanding regulation 59 of the Regulations, continue to have effect, subject to the modifications specified in sub-paragraph (2) below, in relation to any application to set aside a decision of a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance.

(2) The modifications referred to in sub-paragraph (1) above are as if in—

- (a) regulation 3 for the reference to a chairman there were substituted a reference to a legally qualified panel member; and
- (b) regulation 10(1) the first reference to the adjudicating authority who gave the decision and the reference to an authority of like status were a reference to an appeal tribunal which consists of a legally qualified panel member.

(3) Paragraph (1) above shall not apply in any case where an application to set aside a decision of a social security appeal tribunal or a disability appeal tribunal is made after 5th November 2000.

13. Where, immediately before 5th October 1999, payment of family credit or disability working allowance was suspended or withheld by virtue of any provision of Part V of the Social Security (Claims and Payments) Regulations 1987(5) (suspension and extinguishment), the provisions of Chapter I of Part III of the Regulations (suspension and termination) shall apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

14. For the purpose of section 10(1)(b), a decision of a Commissioner as respects family credit or disability working allowance made before 5th October 1999 shall be treated as a decision of a Commissioner made under section 14.

(5) S.I. 1987/1968; relevant amending Instruments are S.I. 1992/247, 1993/2113, 1994/2319 and 1996/1460 and 2306.