

SCHEDULE 16

Article 4

TRANSITIONAL PROVISIONS IN RELATION TO RELEVANT BENEFIT

1. In this Schedule—

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

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(2);

“claimant” and “legally qualified panel member” have the meanings they bear in regulation 1(3) of the Regulations; and

any reference to a decision includes a reference to a decision which fell to be made under the Social Security (Introduction of Disability Living Allowance) Regulations 1991(3) or the Jobseeker’s Allowance (Transitional Provisions) Regulations 1996(4).

2. A decision which fell to be made before 18th 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,

a relevant benefit (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 18th 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 a relevant benefit 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 18th October 1999 under Part II of the Administration Act for a review of a decision made on appeal in relation to a relevant benefit 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 18th 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—

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

(2) S.I. 1987/1968.

(3) S.I. 1991/2891.

(4) S.I. 1996/2567.

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- (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.
- (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 18th October 1999,
- that decision shall take effect from the date on which it would have taken effect had the decision been so made.

(7) Notwithstanding regulation 7(9) of the Regulations, but subject to sub-paragraph (6) above, where in any case relating to attendance allowance or disability living allowance a decision is made under section 10, on the basis of a relevant change of circumstances which occurred before 18th October 1999 and the decision is advantageous to the claimant, the decision shall take effect from—

- (a) where the decision is made on the Secretary of State's own initiative, the date of that decision;
- (b) in a case where the change is relevant to the question of entitlement to a particular rate of benefit and the claimant notifies the change before a date one month after he satisfies the conditions of entitlement to that rate or within such longer period as may be allowed under regulation 8 of the Regulations, the first pay day (as specified in Schedule 6 to the Claims and Payments Regulations) after he satisfied those conditions;
- (c) in a case where the change is relevant to the question of whether benefit is payable and the claimant notifies the change before a date one month after the change or within such longer period as may be allowed under regulation 8 of the Regulations, the first pay day (as specified in Schedule 6 to the Claims and Payments Regulations) after the change occurred; or
- (d) in any other case, the date of the application for the superseding decision.

4.—(1) A decision (other than a decision of a social security appeal tribunal, a disability appeal tribunal, a medical appeal tribunal or a Commissioner) made before 18th October 1999—

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

a relevant benefit, 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 18th October 1999, any person was required to give notice to the claimant of a 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, a disability appeal tribunal or a medical appeal tribunal in respect of a decision in relation to a relevant benefit made before 18th October 1999 has not expired before that date.

(2) Where sub-paragraph (1) 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 an appeal tribunal made on or after 18th 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 a person considering the application were references to a legally qualified panel member;

(ii) a tribunal where references to an appeal tribunal constituted under Chapter I of Part I of the Act;

(b) in paragraph (3E)(5) for the words from “6 years” to the end of the paragraph there were substituted the words “18th November 2000”.

(4) Notwithstanding regulation 3 of the Regulations, the Secretary of State may revise under section 9 of the Act a decision made before 18th October 1999 on a claim for or award of a relevant benefit (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

(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) 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, a disability appeal tribunal or a medical appeal tribunal in relation to a relevant benefit which was duly made before 18th 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, a disability appeal tribunal or a medical appeal tribunal has before 18th October 1999 given a direction under regulation 22(1), regulation 29(1) or regulation 38(1)(6), as the case may be, of the Adjudication Regulations in connection with an appeal in relation to a relevant benefit to that tribunal, and the notification mentioned in paragraph (1A)(7) of that regulation 22, paragraph (1A)(7) of that regulation 29 or paragraph (1A)(7) of that regulation 38 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), regulation 29(1) or regulation 38(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.

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

(6) Regulation 38(1) was substituted by S.I. 1996/2450.

(7) Paragraph (1A) was inserted by S.I. 1996/2450.

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(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 of the appeal tribunal or, in the case of an appeal tribunal which has only one member, that member of the appeal tribunal 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, a disability appeal tribunal or a medical appeal tribunal in relation to a relevant benefit has been struck out under regulation 7(8) of the Adjudication Regulations, a legally qualified panel member may on or after 18th 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)(9) 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, a disability appeal tribunal or a medical appeal tribunal in relation to a relevant benefit which stands adjourned immediately before 18th October 1999.

10. Where, before 18th October 1999, a case fell to be referred by a medical appeal tribunal to an adjudication officer under any provision of the Social Security (Introduction of Disability Living Allowance) Regulations 1991, the appeal tribunal hearing the appeal on or after that date shall refer the case to the Secretary of State to be decided under section 8.

11. A copy of a statement of—

- (a) the reasons for a decision of a social security appeal tribunal, a disability appeal tribunal or, as the case may be, a medical appeal tribunal in relation to a relevant benefit; 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.

12.—(1) Subject to sub-paragraph (2) below, any decision of a social security appeal tribunal, a disability appeal tribunal or a medical appeal tribunal in relation to a relevant benefit 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, disability appeal tribunal or, as the case may be, medical appeal tribunal was given or sent to the applicant.

13.—(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

(8) Regulation 7 was amended by S.I. 1996/2450.

(9) Paragraph (2A) was inserted by S.I. 1996/2450.

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, disability appeal tribunal or medical appeal tribunal in relation to a relevant benefit.

(2) The modifications referred to in sub-paragraph (1) above are as if in regulation 3 for the reference to a chairman and in regulation 10(1) the first reference to the adjudicating authority which gave the decision and to an authority of like status, there were substituted references to 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, disability appeal tribunal or medical appeal tribunal is made after 18th November 2000.

14. Where, immediately before 18th October 1999, payment of a relevant benefit was suspended or withheld by virtue of any provision of Part V of the Claims and Payments Regulations (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.

15. For the purpose of section 10(1)(b), a decision of a Commissioner made before 18th October 1999 as respects a relevant benefit shall be treated as a decision of a Commissioner made under section 14.