
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 371

The Social Security (1998 Order) (Commencement No. 8 and Savings, Consequential and Transitional Provisions) Order (Northern Ireland) 1999

Citation and interpretation

1.—(1) This Order may be cited as the Social Security (1998 Order) (Commencement No. 8 and Savings, Consequential and Transitional Provisions) Order (Northern Ireland) 1999.

(2) In this Order “the Order” means the Social Security (Northern Ireland) Order 1998.

Appointed day

2. The day appointed for the coming into operation of—

- (a) Article 31 of the Order; and
- (b) the provisions of the Order specified in Schedule 1, in so far as they are not already in operation, for the purposes of—
 - (i) benefits under Part II of the Contributions and Benefits Act except child’s special allowance,
 - (ii) severe disablement allowance under sections 68 and 69 of that Act,
 - (iii) benefits for the aged under sections 78 and 79 of that Act,
 - (iv) increases for dependants under Part IV of that Act, and
 - (v) graduated retirement benefit under sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966⁽¹⁾,

is 6th September 1999.

Commencement

3. This Article and Articles 4 to 19 shall come into operation on 6th September 1999.

Savings

4. Notwithstanding the coming into operation of Article 39(3) of the Order or regulation 59 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999⁽²⁾—

- (a) sections 16 and 17 of the Administration Act;
- (b) sections 57 to 59 of, and Schedule 3 to, that Act as they relate to regulations made in relation to those sections; and

(1) 1966 c. 6 (N.I.); sections 35 and 36 were repealed by the Social Security Act 1973 (c. 38) but are continued in force by regulation 2 of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978 (S.R. 1978 No. 105)

(2) S.R. 1999 No. 162

(c) any regulations made under or in connection with the operation of any of those sections, shall continue to have effect with respect to any decision made before 6th September 1999 by the Department under section 15 of that Act.

Consequential Amendments

Amendment of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations

5. Section 35(10) of the National Insurance Act (Northern Ireland) 1966 as continued in force by virtue of regulation 2(3) of, and Schedule 1 to, the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978(3) shall be omitted.

Amendment of the Social Security (Widow's Benefit and Retirement Pensions) Regulations

6.—(1) The Social Security (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979(4) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 1 (interpretation)—

(a) in paragraph (2) for the definition of “the determining authority”(5) there shall be substituted the following definition—

““the determining authority” means, as the case may require, the Department, an appeal tribunal to which there is a right of appeal pursuant to Article 13 of the Social Security (Northern Ireland) Order 1998 or a Commissioner to whom an appeal lies under Article 15 of that Order;” and

(b) in paragraph (3) for “the Department or the determining authority whichever is appropriate” there shall be substituted “the determining authority”.

(3) In regulation 4(2)(b)(i) (days to be treated as days of increment) for “the Department or the determining authority, whichever is appropriate,” there shall be substituted “the determining authority”.

Amendment of the Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations

7.—(1) The Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations (Northern Ireland) 1979(6) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(3) (interpretation) for “, a social security appeal tribunal or an adjudication officer” there shall be substituted “or an appeal tribunal constituted under Article 8 of the Social Security (Northern Ireland) Order 1998”.

(3) In regulation 19 (provision relating to widow's pension for certain widows incapable of self-support by reason of an infirmity) paragraph (2) shall be omitted.

Amendment of the Social Security (Severe Disablement Allowance) Regulations

8.—(1) The Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984(7) shall be amended in accordance with paragraphs (2) and (3).

(3) [S.R. 1978 No. 105](#), to which there are amendments not relevant to this order

(4) [S.R. 1979 No. 243](#); relevant amending regulations are [S.R. 1984 No. 174](#)

(5) The definition of “the determining authority” was substituted by regulation 14 of [S.R. 1984 No. 174](#)

(6) [S.R. 1979 No. 244](#), to which there are amendments not relevant to this order. See also Article 3 of the Social Security Adjudications (Northern Ireland) Order 1983 (S.I.1983/1524 (N.I. 17))

(7) [S.R. 1984 No. 317](#), to which there are amendments not relevant to this order

- (2) In regulation 10 (adjudication)—
 - (a) in paragraph (1)(i) for “an adjudicating medical authority” there shall be substituted “the Department or, as the case may be, an appeal tribunal constituted under Article 8 of the Social Security (Northern Ireland) Order 1998”; and
 - (b) paragraphs (3) and (4) shall be omitted.
- (3) In regulation 17(3) (claims made before 29th November 1984) sub-paragraph (c) shall be omitted.

Amendment of the Income Support (General) Regulations

9.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(**8**) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 22A(**9**) (reduction in applicable amount where the claimant is appealing against a decision that he is not incapable of work)—

- (a) in the heading and in paragraphs (1) and (3) after “against a decision” there shall be inserted “which embodies a determination”; and
- (b) in paragraph (3) for “that decision” there shall be substituted “that determination”.

(3) In regulations 71(1)(**10**) (applicable amounts in urgent cases) and 76(a)(**11**) (reduction in certain cases) after “against a decision” in each place where it occurs there shall be inserted “which embodies a determination”.

(4) In Schedule 1B(**12**) (prescribed categories of person)—

- (a) in the heading to paragraphs 24 to 28 after “decision” there shall be inserted “which embodies a determination”;
- (b) in paragraphs 24(c) and 25(b) after “against the” there shall be inserted “decision which embodies a”;
- (c) in paragraphs 26 and 27 after “decisions” there shall be inserted “which embody a determination”.

Amendment of the Social Security (Incapacity Benefit — Increases for Dependants) Regulations

10. In regulation 3 of the Social Security (Incapacity Benefit — Increases for Dependants) Regulations (Northern Ireland) 1994(**13**) (allocation of contributions for a spouse or child)—

- (a) in paragraph (1) for “may be determined by the adjudicating authority so as to” there shall be substituted “would”; and
- (b) in paragraph (3) the definition of “adjudicating authority” shall be omitted.

Amendment of the Social Security (Incapacity for Work) (General) Regulations

11.—(1) The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**14**) shall be amended in accordance with paragraphs (2) and (3).

(8) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 146 and S.R. 1996 No. 199

(9) Regulation 22A was inserted by regulation 13 of S.R. 1996 No. 199

(10) Regulation 71(1) was amended by regulation 18 of S.R. 1996 No. 199

(11) Regulation 76 was inserted by regulation 28 of S.R. 1988 No. 146 and amended by regulation 21 of S.R. 1996 No. 199

(12) Schedule 1B was inserted by Schedule 1 to S.R. 1996 No. 199

(13) S.R. 1994 No. 485, to which there are amendments not relevant to this order

(14) S.R. 1995 No. 41, to which there are amendments not relevant to this order

(2) In regulation 2(1) (interpretation) the definitions of “adjudication officer” and “social security appeal tribunal” shall be omitted.

(3) In regulation 18(2) (disqualification for misconduct, etc.) for “may be determined under Part II of the Administration Act” there shall be substituted “the Department may determine”.

Amendment of the Disability Working Allowance and Income Support (General) (Amendment) Regulations

12. In regulation 4(5) of the Disability Working Allowance and Income Support (General) (Amendment) Regulations (Northern Ireland) 1995(15) (transitional provisions with respect to the Income Support Regulations) for “an adjudication officer on or after 13th April 1995, determines” there shall be substituted “it is determined on or after 13th April 1995”.

Amendment of the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations

13. In Regulation 11(3) of the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996(16) (saving) after “Social Security Administration (Northern Ireland) Act 1992” there shall be inserted “or a decision is made in relation to that entitlement under Article 10 or 11 of the Social Security (Northern Ireland) Order 1998”.

Modifications

Modification of the Social Security Benefit (Dependency) Regulations

14. The Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977(17) shall have effect in relation to any benefit mentioned in Article 2(b) as if in regulation 1(2) (interpretation) for the definition of “the determining authority”(18) there were substituted the following definition—

““the determining authority” means, as the case may require, the Department, an appeal tribunal to which there is a right of appeal pursuant to Article 13 of the Social Security (Northern Ireland) Order 1998 or a Commissioner to whom an appeal lies under Article 15 of that Order;”.

Modification of the Social Security (Claims and Payments) Regulations

15. The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(19) shall have effect in relation to any benefit mentioned in Article 2(b) as if—

(a) in regulation 2(1) (interpretation)—

(i) after the definition of “the Jobseekers Order”(20) there were inserted the following definition—

““the 1998 Order” means the Social Security (Northern Ireland) Order 1998;”,

(ii) the definition of “adjudicating authority” were omitted, and

(15) S.R. 1995 No. 67, to which there are amendments not relevant to this order

(16) S.R. 1996 No. 11, to which there are amendments not relevant to this order

(17) S.R. 1977 No. 74; relevant amending regulations are S.R. 1984 No. 174

(18) The definition of “the determining authority” was substituted by regulation 8 of S.R. 1984 No. 174

(19) S.R. 1987 No. 465; relevant amending regulations are S. R. 1989 No. 398, S.R. 1992 Nos. 7 and 83, S.R. 1993 No. 375, S.R. 1994 Nos. 345 and 484, S.R. 1996 Nos. 85, 354 and 432 and S.R. 1998 No. 241

(20) The definition of “the Jobseekers Order” was inserted by regulation 2(2)(a) of S.R. 1996 No. 354

- (iii) in the definition of “claim for benefit” in paragraph (c) for “the review of an award or” in both places where it occurs there were substituted “a revision under Article 10 of the 1998 Order or supersession under Article 11 of that Order”;
- (b) in regulation 13 (advance claims and awards)—
 - (i) in paragraph (1) for “the adjudicating authority” and “that authority” there were substituted “the Department”, and
 - (ii) in paragraph (2) for “An award under paragraph (1)(b) shall be reviewed by the adjudicating authority” there were substituted “A decision pursuant to paragraph (1) (b) to award benefit may be revised under Article 10 of the 1998 Order”;
- (c) in regulation 17(7) (duration of awards) “; and where those requirements are not satisfied the award shall be reviewed” were omitted;
- (d) in Part V (suspension and extinguishment)—
 - (i) in the heading “Suspension and”, and
 - (ii) regulations 36 to 36B(21) (suspension and withholding of benefit), were omitted; and
- (e) in regulation 37(2A)(22) (extinguishment of right to payment of sums by way of benefit where payment is not obtained within the prescribed period)—
 - (i) for “adjudicating authority” in both places where it occurs there were substituted “Department”,
 - (ii) in sub-paragraph (a) for “the Department has” there were substituted “it”, and
 - (iii) in sub-paragraph (c) “the Department has certified” and “that”, in each place where it occurs, were omitted and, in head (ii), for “it” there were substituted “the Department”.

Modification of the Social Security (Payments on account, Overpayments and Recovery) Regulations

16. The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(23) shall have effect in relation to any benefit mentioned in Article 2(b) as if—

- (a) in regulation 1(2) (interpretation)—
 - (i) after the definition of “the Order” there were inserted the following definition—

““the 1998 Order” means the Social Security (Northern Ireland) Order 1998;”,
and
 - (ii) for the definition of “adjudicating authority”(24) there were substituted the following definition—

““adjudicating authority” means, as the case may require, the Department, an appeal tribunal to which there is a right of appeal pursuant to Article 13 of the 1998 Order or a Commissioner to whom an appeal lies under Article 15 of that Order;”;

(21) Regulations 36 to 36B were substituted for regulation 36 by regulation 7(9) of S.R. 1992 No. 83, regulation 36 was amended by regulation 3(8) of S.R. 1993 No. 375, regulation 2(17) of S.R. 1996 No. 354 and regulation 2(4) of S.R. 1996 No. 432, regulation 36A was substituted by regulation 2 of S.R. 1998 No. 241, regulations 36AA and 36AB were inserted by regulation 2(6) of S.R. 1994 No. 345 and regulation 36AA was amended by regulation 2(18) of S.R. 1996 No. 354 and regulation 2(5) of S.R. 1996 No. 432

(22) Paragraph (2A) was inserted by regulation 6(3) of S.R. 1989 No. 398 and amended by regulation 3(10) of S.R. 1993 No. 375 (23) S.R. 1988 No. 142; relevant amending regulations are S.R. 1992 No. 6

(24) The definition of “adjudicating authority” was amended by regulation 14(2)(a) of S.R. 1992 No. 6

- (b) in regulation 2(1)(b) (making of interim payments) for “a reference, review,” there were substituted “an”;
- (c) in regulation 5(2) (offsetting prior payment against subsequent award)—
 - (i) for Case 1 there were substituted—

“Case 1: Payment pursuant to a decision which is revised, superseded or overturned on appeal

Where a person has been paid a sum by way of benefit pursuant to a decision which is subsequently revised under Article 10 of the 1998 Order, superseded under Article 11 of that Order or overturned on appeal.”, and

- (ii) in Case 2 “, on review or appeal,” were omitted;
- (d) in the heading to Part VI “Revision of Determination and” were omitted; and
- (e) in regulation 12 (circumstances in which determination need not be revised)—
 - (i) for “or revision of determination” there were substituted “, revision or supersession”, and
 - (ii) for “for reviewing and revising the determination under which payment was made” there were substituted “for the decision pursuant to which the payment was made to be revised under Article 10 of the 1998 Order or superseded under Article 11 of that Order”.

Modification of the Social Security Benefit (Computation of Earnings) Regulations

17. The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996(25) shall have effect in relation to any benefit mentioned in Article 2(b) as if—

- (a) subject to the following paragraphs, for “the adjudicating authority” and “an adjudicating authority” in each place where they occur there were substituted “the Department”;
- (b) in regulation 2(1) (interpretation)—
 - (i) after the definition of “the Employment Rights Order” there were inserted the following definition—

““the Order” means the Social Security (Northern Ireland) Order 1998;”, and
 - (ii) the definition of “adjudicating authority” were omitted;
- (c) in regulation 4 (notional earnings)—
 - (i) in paragraph (1) for “of the determination of the claim or of any subsequent review, the adjudicating authority shall treat the claimant” there were substituted “on which a decision falls to be made by the Department under Chapter II of Part II of the Order or regulations made thereunder, the claimant shall be treated”, and
 - (ii) in paragraph (2) “the adjudicating authority shall treat the claimant” there were substituted “the claimant shall be treated”;
- (d) in regulation 6(8) (calculation of earnings of employed earners), in paragraph (b)(ii)(bb) of the definition of “part-time employment” for “of review” there were substituted “on which a revision or supersession of a decision falls to be made”;
- (e) in regulation 13(8) (calculation of net profit of self-employed earners) for “The adjudicating authority shall refuse to make a deduction” there were substituted “A deduction shall not be made” and for “it is not” there were substituted “the Department is not”;

- (f) in regulation 14(2) (deduction of tax and contributions for self-employed earners) for “of the determination of the claim or of any subsequent review” in both places where it occurs there were substituted “on which a decision is made by the Department under Chapter II of Part II of the Order or regulations made thereunder”; and
- (g) regulation 16 (transitional provision to suspend benefit and make interim payments) were omitted.

Transitional Provisions and Revocations

Transitional provisions

18.—(1) Subject to paragraph (3), any decision which fell to be made, but was not made, before 6th September 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 (other than a decision which fell to be made on appeal) shall be made by the Department under Article 9(1)(a) or, as the case may be, (c) of the Order.

(2) Subject to paragraph (3), any reference of a disablement question made in relation to a relevant benefit which fell to be determined, but was not determined, before 6th September 1999 shall be determined by the Department.

(3) Any case referred to a medical appeal tribunal under section 44(3)(b) of the Administration Act for a decision in relation to a relevant benefit which was not determined before 6th September 1999 shall be determined by an appeal tribunal.

(4) Any application made 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 6th September 1999 shall be treated as an application to the Department—

- (a) where the application is made—
 - (i) within three months of the date of notification of the decision or such longer period as may be allowed under paragraph (6), and
 - (ii) other than on the grounds of a relevant change of circumstances, for a revision of that decision under Article 10 of the Order; or
- (b) in any other case, for a decision under Article 11 of the Order superseding that decision.

(5) Any application made before 6th September 1999 under Part II of the Administration Act for a review of a decision made on appeal in relation to a relevant benefit shall be treated as an application to the Department for a decision under Article 11 of the Order superseding that decision.

(6) Subject to paragraphs (7) and (8), the period of three months specified in paragraph (4)(a) may be extended where the application is made before 6th October 2000 by a claimant or a person acting on his behalf, containing—

- (a) particulars of the grounds on which an extension of time is sought; and
- (b) sufficient details of the decision to enable it to be identified.

(7) An application for an extension of time shall not be granted unless the Department is satisfied that—

- (a) it is reasonable to grant the application;
- (b) the application for review has merit; and
- (c) special circumstances are relevant to the application for an extension of time and, as a result of those special circumstances, it was not practicable for the application for review

to be made within three months of the date of notification of the decision which it is sought to have reviewed.

(8) In determining whether it is reasonable to grant an application for an extension of time, no account shall be taken of the following—

- (a) that the claimant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by paragraph (4)(a)); or
- (b) that a Commissioner (including a Commissioner within the meaning of section 39(1) of the Social Security Act 1998⁽²⁶⁾) or a court has taken a different view of the law from that previously understood and applied.

(9) Where, by virtue of paragraph (4)(b) or (5)—

- (a) a decision made under Article 11 of the Order is advantageous to the claimant; and
- (b) the same decision could have been made on a review before 6th September 1999,

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

(10) Any decision (other than a decision of a social security appeal tribunal, a medical appeal tribunal or a Commissioner) made before 6th September 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 as a decision of the Department under Article 9(1)(a) or, as the case may be, (c) of the Order.

(11) Where notice of a decision referred to in paragraph (10) was not given or sent to the claimant before 6th September 1999, the Department shall give or send notice of that decision to the claimant.

(12) Where, in relation to a relevant benefit—

- (a) a decision was made before 6th September 1999; and
- (b) the time limit within which an appeal may be made against that decision has not expired before that date,

notwithstanding regulation 59 of the Decisions and Appeals Regulations, regulation 3 of the Adjudication Regulations⁽²⁷⁾ as it relates to the time within which an appeal may be made, or any extension of that period, shall continue to apply in relation to any appeal, subject to the modifications specified in paragraph (13).

(13) Regulation 3 of the Adjudication Regulations shall have effect as if—

- (a) references to a chairman or to a person considering the application were references to a legally qualified panel member;
- (b) references to a tribunal were references to an appeal tribunal constituted under Article 8 of the Order; and
- (c) in paragraph (3E)⁽²⁸⁾ for the words from “six years” to the end there were substituted “6th October 2000”.

(14) Notwithstanding regulation 3 of the Decisions and Appeals Regulations, a decision made before 6th September 1999 on a claim for, or award of, a relevant benefit (other than a decision made on appeal) may be revised by the Department under Article 10 of the Order—

⁽²⁶⁾ 1998 c. 14

⁽²⁷⁾ Regulation 3 was amended by regulation 2(2) of S.R. 1996 No. 24 and regulation 3(4) of S.R. 1996 No. 457

⁽²⁸⁾ Paragraph (3E) was inserted by regulation 2(2)(b) of S.R. 1996 No. 24

- (a) pursuant to an application for a review of that decision made within three months of the date of notification of the decision; or
 - (b) where an appeal has been made against that decision but not determined.
- (15) Where a decision is revised pursuant to paragraph (14) the appeal shall lapse unless the revised decision is not more advantageous to the appellant than the decision before it was revised.
- (16) Any appeal to a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit which was not determined before 6th September 1999 shall, without prejudice to Chapter III of Part V of the Decisions and Appeals Regulations, be treated as an appeal to an appeal tribunal against a decision of the Department.
- (17) Paragraphs (18) to (20) shall apply where—
- (a) the clerk to the tribunal gave a direction under regulation 22(1) or, as the case may be, 38(1) of the Adjudication Regulations⁽²⁹⁾; and
 - (b) notification referred to in paragraph (1A) of regulation 22 or, as the case may be, 38 of those Regulations was not received by him before 6th September 1999.
- (18) A notification in response to a direction given under regulation 22(1) or, as the case may be, 38(1) of the Adjudication Regulations shall be in writing and shall be made within 14 days of receipt of the direction or within such other period as the clerk to the appeal tribunal may direct.
- (19) An appeal may be struck out by the clerk to the appeal tribunal where a notification referred to in paragraph (18) is not received within the period specified in that paragraph.
- (20) An appeal which has been struck out in accordance with paragraph (19) shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Decisions and Appeals Regulations.
- (21) An oral hearing of the appeal shall be held where—
- (a) a notification is received by the clerk to the appeal tribunal under paragraph (18); 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.
- (22) Where an appeal to a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit has been struck out under regulation 7 of the Adjudication Regulations a legally qualified panel member may, 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) paragraph (2A)⁽³⁰⁾ of that regulation does not apply,
- and the appeal shall be treated as an appeal to an appeal tribunal against a decision of the Department.
- (23) An appeal tribunal shall completely rehear any appeal to a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit which stands adjourned immediately before 6th September 1999.
- (24) A copy of a statement of—
- (a) the reasons for a decision of a social security appeal tribunal or, as the case may be, a medical appeal tribunal in relation to a relevant benefit; and
 - (b) its findings of fact material thereto,

⁽²⁹⁾ Paragraphs (1) and (1A) of regulation 22 and paragraphs (1) and (1A) of regulation 38 were substituted respectively by regulation 3(10) and (13)(a) of [S.R. 1996 No. 457](#)

⁽³⁰⁾ Paragraph (2A) was inserted by regulation 3(8)(c) of [S.R. 1996 No 457](#)

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

(25) Subject to paragraph (26), any decision of a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit shall be treated as a decision of an appeal tribunal.

(26) Where paragraph (25) applies, any application for leave to appeal which is made for the purposes of Article 15(10)(a) of the Order shall be made no later than three months from the date on which a copy of the statement of the decision of the social security appeal tribunal or, as the case may be, the medical appeal tribunal was given or sent to the applicant.

(27) Notwithstanding regulation 59 of the Decisions and Appeals Regulations, and subject to paragraph (29), regulation 10 of the Adjudication Regulations, and regulation 3 of those Regulations in so far as it relates to that regulation, shall continue to apply in relation to any application to set aside a decision of a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit, subject to the modifications specified in paragraph (28).

(28) The Adjudication Regulations shall have effect as if—

- (a) in regulation 3, reference to a chairman were a reference to a legally qualified panel member; and
- (b) in regulation 10(1) the first reference to the adjudicating authority which gave the decision or to an authority of like status were a reference to an appeal tribunal constituted under Article 8 of the Order.

(29) Paragraph (27) shall not apply in any case where an application to set aside a decision of a social security appeal tribunal or a medical appeal tribunal is made after 6th October 2000.

(30) Where, before 6th September 1999, payment of a relevant benefit was suspended or withheld by virtue of any provision of Part V of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the provisions of Chapter I of Part III of the Decisions and Appeals Regulations shall apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

(31) For the purpose of Article 11(1)(b) of the Order, a decision of a Commissioner in relation to a relevant benefit made before 6th September 1999 shall be treated as a decision of a Commissioner made under Article 15 of that Order.

(32) A determination of the Department (including a determination made following a change of circumstances) whether a person is, or is to be treated as, capable or incapable of work shall be conclusive for the purposes of any decision which falls to be made—

- (a) under a relevant statutory provision; or
- (b) on a claim for, or award of, housing benefit.

(33) Where before 29th November 1999, in relation to a determination for any purpose to which Part XIIA of the Contributions and Benefits Act(31) applies, a determination falls to be made as to—

- (a) whether a person is, or is treated as, capable or incapable of work in respect of any period; or
- (b) whether a person is terminally ill,

that determination shall be made by the Department notwithstanding regulation 1(1)(e) and (f) of the Decisions and Appeals Regulations and that other matters fall to be determined by another authority.

(34) An appeal shall lapse where the Department makes a determination pursuant to paragraph (33) in relation to a case where an appeal against a decision of an adjudication officer

(31) Part XIIA was inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

has been made but not determined provided that the revised decision is more advantageous to the appellant than the decision before it was revised.

(35) Where—

- (a) the Department reverses a determination under section 167C of the Contributions and Benefits Act that a person satisfies or is treated as satisfying the all work test; and
- (b) that determination which is reversed is necessary to or embodied in a decision in relation to which Part II of the Administration Act continues to have effect,

an adjudication officer shall revise that decision upon review in consequence of that reversal.

(36) An appeal made by or on behalf of a person against a decision of an adjudication officer (other than a decision in relation to a relevant benefit) which incorporates a determination as to whether the all work test is satisfied or treated as satisfied—

- (a) shall be heard by a social security appeal tribunal consisting of two persons, one being a medically qualified panel member and the other being a legally qualified panel member; and
- (b) may be heard with an appeal made by or on behalf of the same person against a decision of the Department which incorporates such a determination.

(37) Where an appeal to which paragraph (36) applies is heard with an appeal to an appeal tribunal—

- (a) Article 14 of the Order shall not apply in relation to the appeal to the appeal tribunal; and
- (b) notwithstanding regulation 59 of the Decisions and Appeals Regulations, regulation 24 of the Adjudication Regulations and regulation 3 of, and Schedule 2 to, those Regulations in so far as they relate to that regulation 24 shall apply to the appeal to the appeal tribunal, subject to the modifications specified in paragraph (38).

(38) The provisions of the Adjudication Regulations mentioned in paragraph (37) shall have effect as if—

- (a) references to an adjudication officer were references to the Department;
- (b) references to an appeal tribunal were references to an appeal tribunal constituted under Article 8 of the Order;
- (c) references to the chairman of an appeal tribunal and a chairman of appeal tribunals were references to a chairman of an appeal tribunal constituted under Article 8 of the Order or, in the case of a tribunal which has only one member, that member;
- (d) references to the clerk to the tribunal were references to the clerk to the appeal tribunal; and
- (e) “under section 39(4) of the Administration Act” were omitted.

(39) In this Article—

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations (Northern Ireland) 1995(**32**);

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**33**);

“disablement question” shall be construed in accordance with section 43 of the Administration Act;

“legally qualified panel member” and “medically qualified panel member” have the same meanings as in regulation 1(2) of the Decisions and Appeals Regulations;

“relevant benefit” means any benefit mentioned in Article 2(b);

(32) S.R. 1995 No. 293

(33) S.R. 1999 No. 162

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

“relevant statutory provision” has the same meaning as in Article 9(4) of the Order;
“the all work test” has the same meaning as in regulation 2(1) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995.

Revocations

19. The Regulations specified in column (1) of Schedule 2 are revoked to the extent mentioned in column (3) of that Schedule.

Sealed with the Official Seal of the Department of Health and Social Services on

L.S.

3rd September 1999.

W. B. J. Davis
Assistant Secretary