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## STATUTORY INSTRUMENTS

# 1998 No. 1506 (N.I. 10)

## The Social Security (Northern Ireland) Order 1998 <sup>F1</sup>

24th June 1998

**F1** functions transf. by SR 1999/481

### Modifications etc. (not altering text)

- C1** Order: power to apply (with modifications) conferred by 2004 c. 6, s. 23(6) (as substituted (1.4.2009) by Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 3(1), **Sch. 1 para. 416(4)**)
- C2** Order: power to apply (with modifications) conferred (1.1.2010 for certain purposes otherwise prosp.) by Saving Gateway Accounts Act 2009 (c. 8), **ss. 24(4)(5)**, 31; S.I. 2009/3332, **art. 2(e)**; S.I. 2010/921, **art. 2(1)** which was revoked by S.I. 2010/1640, **art. 2**
- C3** Order: certain provisions applied (with modifications) (1.10.2010) by Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (S.R. 2010/312), regs. 1, **16**, Sch. 2
- C4** Order: transfer of functions (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(1), **Sch. 17 para. 49** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

## PART I

### INTRODUCTORY

#### Title and commencement

1.—(1) This Order may be cited as the Social Security (Northern Ireland) Order 1998.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Department may by order appoint.

(3) The following provisions of this Order shall come into operation on the seventh day after the day on which this Order is made—

- (a) this Article and Article 2;
- (b) paragraph (1) of Article 47 (so far as relating to a sum which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988), and paragraphs (2) to (4) of that Article;
- (c) Articles 62, 65, 68 and 73 to 77;
- (d) Schedule 5.

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(4) An order under paragraph (2) may make such savings, or such transitional or consequential provision, as the Department considers necessary or expedient—

- (a) in preparation for or in connection with the coming into operation of any provision of this Order; or
- (b) in connection with the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

#### Subordinate Legislation Made

- P1** [Art. 1\(2\)](#) power partly exercised: different dates appointed for specified provisions by [S.R. 1998/312](#), [art. 2](#), [Sch.](#);
- different dates appointed for specified provisions by [S.R. 1998/395](#), [art. 2](#);
- different dates appointed for specified provisions by [S.R. 1999/72](#), [art. 2](#);
- different dates appointed for specified provisions by [S.R. 1999/102](#), [art. 2](#), [Sch.](#);
- 5.4.1999 appointed for specified provisions by [S.R. 1999/168](#), [art. 2](#);
- different dates appointed for specified provisions by [S.R. 1999/246](#), [arts. 2, 3](#), [Sch. 1](#);
- different dates appointed for specified provisions by [S.R. 1999/310](#), [arts. 2, 3](#), [Sch. 1](#);
- 6.9.1999 appointed for specified provisions by [S.R. 1999/371](#), [arts. 2, 3](#), [Sch. 1](#);
- 5.10.1999 appointed for specified provisions by [S.R. 1999/407](#), [arts. 2, 3](#), [Sch.](#);
- 18.10.1999 appointed for specified provisions by [S.R. 1999/428](#), [arts. 2, 3](#), [Sch. 1](#);
- different dates appointed for specified provisions by [S.R. 1999/472](#), [arts. 2, 3](#), [Sch. 1](#);
- 2.7.2001 appointed for specified provisions by [S.R. 2001/260](#), [art. 2](#);
- 1.10.2006 appointed for specified provision by {[S.R. 2006/360](#)}, [art. 2](#)

#### Interpretation

**2.—(1)** The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

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

“the Child Support Order” means the Child Support (Northern Ireland) Order 1991;

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

“the Department” means the Department of Health and Social Services;

“the Jobseekers Order” means the Jobseekers (Northern Ireland) Order 1995;

“prescribe” means prescribe by regulations;

“the Recovery of Benefits Order” means the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“the Vaccine Damage Payments Act” means the Vaccine Damage Payments Act 1979.

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**PART II**  
**DECISIONS AND APPEALS**  
**CHAPTER I**  
**GENERAL**

*Decisions*

**Transfer of functions to the Department**

- 3**<sup>F2</sup>. The following functions are hereby transferred to the Department, namely—
- (a) the functions of adjudication officers appointed under section 36 of the Administration Act;
  - (b) the functions of social fund officers appointed under section 62 of that Act; and
  - (c) the functions of child support officers appointed under Article 15 of the Child Support Order.

**F2** functions transf. by 1999 c. 10

**Use of computers**

**4.**—(1) Any decision, determination or assessment falling to be made or certificate falling to be issued by the Department under any relevant statutory provision may be made or issued not only by an officer of the Department acting under its authority but also—

- (a) by a computer for whose operation such an officer is responsible; and
  - (b) in the case of a decision, determination or assessment that may be made or a certificate that may be issued by a person providing services to the Department, by a computer for whose operation such a person is responsible.
- (2) In this Article “relevant statutory provision” means any statutory provision contained in—
- (a) Chapter II of this Part;
  - (b) the Contributions and Benefits Act;
  - (c) the Administration Act;
  - (d) the Child Support Order;
  - (e) the Social Security (Incapacity for Work) (Northern Ireland) Order 1994;
  - (f) the Child Support (Northern Ireland) Order 1995;
  - (g) the Jobseekers Order;<sup>F3</sup> . . .
  - (h) the Recovery of Benefits Order<sup>F4</sup>; or]
  - <sup>F4</sup>(i) the State Pension Credit Act (Northern Ireland) 2002.]

**F3** 2002 c. 14 (NI)

**F4** 2002 c. 14 (NI)

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## Appeals

### Unified appeal tribunals

5.—(1) Subject to the provisions of this Order—

- (a) the functions of social security appeal tribunals, disability appeal tribunals and medical appeal tribunals constituted under Part II of the Administration Act;
- (b) the functions of child support appeal tribunals established under Article 23 of the Child Support Order; and
- (c) the functions of vaccine damage tribunals established by regulations made under section 4 of the Vaccine Damage Payments Act,

are hereby transferred to appeal tribunals constituted under the following provisions of this Chapter.

(2) Accordingly appeals under—

- (a) Article 13;
- (b) Article 22 of the Child Support Order, as substituted by Article 42;
- (c) section 4 of the Vaccine Damage Payments Act, as substituted by section 46 of the Social Security Act 1998; and
- (d) Article 13 of the Recovery of Benefits Order,

shall be determined by appeal tribunals so constituted (in the following provisions of this Chapter referred to as “appeal tribunals”).

### President of appeal tribunals

6.—(1) The<sup>F5</sup> Lord Chancellor may appoint for Northern Ireland a President of appeal tribunals.

(2) A person is qualified to be appointed President if he is a barrister or solicitor of at least 10 years' standing.

(3) Schedule 1 shall have effect for supplementing this Article.

**F5** By [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), ss. 5, 87, [Sch. 3 para. 24](#) it is provided that for the words "Lord Chancellor" there shall be substituted (prosp.) "First Minister and deputy First Minister, acting jointly," in art. 6(1). (The said amending Sch. 3 is subsequently substituted (12.4.2010) by the [Northern Ireland Act 2009 \(c. 3\)](#), [Sch. 3 para. 13](#); S.I. 2010/812, [art. 2](#). This new Sch. 3 of the [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#) does not amend other legislation, therefore this amendment never comes into operation.)

### Panel for appointment to appeal tribunals

7.—(1) The Lord Chancellor shall constitute for Northern Ireland a panel of persons to act as members of appeal tribunals.

(2) Subject to paragraph (3), the panel shall be composed of<sup>F6</sup> persons appointed by the Lord Chancellor].

(3) The panel shall include persons possessing such qualifications as may be prescribed by regulations made with the concurrence of the Lord Chancellor [<sup>F7</sup>; and such concurrence may be given only after consultation with the Lord Chief Justice].

[<sup>F8</sup>(3A) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (3)—

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(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).”

(3B) As part of the selection process for the appointment of a medical practitioner as a member of the panel, the Northern Ireland Judicial Appointments Commission shall consult the Chief Medical Officer of the Department.]

(4) The numbers of persons appointed to the panel, and the terms and conditions of their appointments, shall be determined by the Lord Chancellor with the consent of the Department.

(5) <sup>F9</sup>.....

**F6** Words in art. 7(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 113(2); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(b)

**F7** Words in art. 7(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 113(3); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(b)

**F8** Art. 7(3A)(3B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 113(4); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(b)

**F9** Art. 7(5) repealed (3.4.2006) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 86, 87, Sch. 13; S.R. 2006/124, art. 2, Sch. paras. 9, 11(k)

### Constitution of appeal tribunals

8.—(1) Subject to paragraph (2), an appeal tribunal shall consist of one, two or three members drawn by the President from the panel constituted under Article 7.

(2) The member, or (as the case may be) at least one member, of an appeal tribunal shall be a barrister or solicitor.

(3) Where an appeal tribunal has more than one member—

(a) the President shall nominate one of the members as chairman;

(b) decisions shall be taken by a majority of votes; and

(c) unless regulations otherwise provide, the chairman shall have any casting vote.

(4) Where it appears to an appeal tribunal that a matter before it involves a question of fact of special difficulty, then, unless regulations otherwise provide, the tribunal may require one or more experts to provide assistance to it in dealing with the question.

(5) In paragraph (4) “expert” means a member of the panel constituted under Article 7 who appears to the appeal tribunal concerned to have knowledge or experience which would be relevant in determining the question of fact of special difficulty.

(6) Regulations shall make provision with respect to—

(a) the composition of appeal tribunals;

(b) the procedure to be followed in allocating cases among differently constituted tribunals; and

(c) the manner in which expert assistance is to be given under paragraph (4).

(7) Schedule 1 shall have effect for supplementing this Article.

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## CHAPTER II

### SOCIAL SECURITY DECISIONS AND APPEALS

#### **Modifications etc. (not altering text)**

- C5** Pt. 2 Ch. 2 (arts. 9-39) applied (1.7.2008 for certain purposes, otherwise 27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\), ss. 18\(2\), 60\(1\)](#); S.R. 2008/276, art. 2(2)(c), [Sch. Pt. 1](#)
- C6** Pt. 2 Ch. 2 (arts. 9-39) modified (1.1.2009) by [Health and Social Care Act 2008 \(c. 14\), ss. 135\(8\), 170\(3\)](#); S.I. 2008/3137, [art. 2](#)
- C7** Pt. 2 Ch. 2 (arts. 9-39) modified by [1992 c. 7, Sch. 4C para. 4](#) (as inserted (prosp.) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), ss. 81\(5\), 118\(1\), Sch. 2](#))
- C8** Pt. 2 Ch. 2 (arts. 9-39) applied (1.10.2010) by [Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/312\), regs. 1, 6, Sch. 1](#)
- C9** Pt. 2 Ch. 2 (arts. 9-39) applied (with modifications) (1.10.2010) by [Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/312\), regs. 1, 16, Sch. 2](#)

#### *Decisions*

#### **Decisions by the Department**

<sup>F10F11F12</sup>9.—(1) Subject to the provisions of this Chapter, it shall be for the Department—

- (a) to decide any claim for a relevant benefit;
- (b) to decide any claim for a social fund payment mentioned in section 134(1)(b) of the Contributions and Benefits Act;<sup>F13</sup> and]
- (c) subject to paragraph (5), to make any decision that falls to be made under any relevant statutory provision;<sup>F13</sup> . . .

*Sub#para. (d) rep. by SI 1999/671*

(2) Where at any time a claim for a relevant benefit is decided by the Department—

- (a) the claim shall not be regarded as subsisting after that time; and
- (b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.

(3) In this Chapter “relevant benefit”,<sup>F14</sup> . . . , means any of the following, namely—

- (a) benefit under Parts II to V of the Contributions and Benefits Act;
- (b) a jobseeker's allowance;

<sup>F15</sup>(bb) state pension credit;]

- (c) income support;

*Sub#paras. (d) and (e) rep. by 2002 c. 21*

- (f) a social fund payment mentioned in section 134(1)(a) or (2) of the Contributions and Benefits Act;
- (g) child benefit;
- (h) such other benefit as may be prescribed.

(4) In this Article “relevant statutory provision” means any statutory provision contained in this Chapter, the Contributions and Benefits Act, the Administration Act, the Social Security

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(Consequential Provisions) (Northern Ireland) Act 1992<sup>F16</sup>, the Jobseekers Order or the State Pension Credit Act (Northern Ireland) 2002], other than one contained in—

- (a) Part VII of the Contributions and Benefits Act so far as relating to housing benefit;
- (b) Part VIII of the Administration Act (arrangements for housing benefit).

[<sup>F13</sup>(5) Paragraph (1)(c) does not include any decision which under Article 7 of the Social Security Contributions (Transfer of Functions, etc.)(Northern Ireland) Order 1999 falls to be made by an officer of the Inland Revenue.]

- F10** functions transf. by 1999 c. 10
- F11** mod. by SR 1999/349, 350
- F12** prosp. in pt. certain functions transf. by 2002 c. 21
- F13** SI 1999/671
- F14** 1999 c. 30
- F15** 2002 c. 14 (NI)
- F16** 2002 c. 14 (NI)

**Modifications etc. (not altering text)**

- C10** Art. 9 applied (10.4.2006) by S.I. 2006/1034, reg. 2

**Revision of decisions**

**10** <sup>F17</sup>.—<sup>F18F19</sup>(1) Subject to Article 36(3), any decision of the Department under Article 9 or 11 may be revised by the Department—

- (a) either within the prescribed period or in prescribed cases or circumstances; and
- (b) either on an application made for the purpose or on the Department's own initiative,

and regulations may prescribe the procedure by which a decision of the Department may be so revised.

(2) In making a decision under paragraph (1), the Department need not consider any issue that is not raised by the application or, as the case may be, did not cause the Department to act on its own initiative.

(3) Subject to paragraphs (4) and (5) and Article 27, a revision under this Article shall take effect as from the date on which the original decision took (or was to take) effect.

(4) Regulations may provide that, in prescribed cases or circumstances, a revision under this Article shall take effect as from such other date as may be prescribed.

(5) Where a decision is revised under this Article, for the purpose of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.

(6) Except in prescribed circumstances, an appeal against a decision of the Department shall lapse if the decision is revised under this Article before the appeal is determined.

- F17** mod. by SR 1999/349, 350
- F18** mod. by SR 1999/225
- F19** prosp. in pt. certain functions transf. by 2002 c. 21

**Decisions superseding earlier decisions**

**11** <sup>F20</sup>.—<sup>F21F22</sup>(1) Subject to<sup>F23</sup> paragraph (3)] and Article 36(3), the following, namely—

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(a) any decision of the Department under Article 9 or this Article, whether as originally made or as revised under Article 10; and

(b) any decision under this Chapter of an appeal tribunal or a Commissioner,

may be superseded by a decision made by the Department, either on an application made for the purpose or on the Department's own initiative.

(2) In making a decision under paragraph (1), the Department need not consider any issue that is not raised by the application or, as the case may be, did not cause the Department to act on its own initiative.

(3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this Article.

(Para)

(5) Subject to paragraph (6) and Article 27, a decision under this Article shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.

(6) Regulations may provide that, in prescribed cases or circumstances, a decision under this Article shall take effect as from such other date as may be prescribed.

**F20** mod. by SR 1999/349, 350  
**F21** mod. by SR 1999/225  
**F22** prosp. in pt. certain functions transf. by 2002 c. 21  
**F23** SI 1999/671

*[<sup>F24</sup>References of issues by the Department to Inland Revenue]*

**F24** SI 1999/671

**Reference of issues by the Department to Inland Revenue**

**11A**<sup>F25</sup>.—(1) Regulations may make provision requiring the Department, where on consideration of any claim or other matter it is of the opinion that there arises any issues which under Article 7 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 falls to be decided by an officer of the Inland Revenue, to refer the issue to the Inland Revenue.

(2) Regulations under this Article may#

- (a) provide for the Inland Revenue to give the Department a preliminary opinion on any issue referred to them,
- (b) Specify the circumstances in which an officer of the Inland Revenue is to make a decision under Article 7 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 on a reference by the department,
- (c) enable or require the Department, in specified circumstances, to deal with any other issue arising on consideration of the claim or other matter pending the decision on the referred issue, and
- (d) require the Department to decide the claim or other matter in accordance with the decision of an officer of the Inland Revenue on the issue referred to them, or in accordance with any determination of the tax appeal Commissioners made on appeal from their decision.

**F25** prosp. in pt. certain functions transf. by 2002 c. 21

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## Regulations with respect to decisions

**12**<sup>F26</sup>.—<sup>F27F28</sup>(1) Subject to the provisions of this Chapter and the Administration Act, provision may be made by regulations for the making of any decision by the Department under or in connection with the current legislation, or the former legislation, including a decision on a claim for benefit.

(2) Where it appears to the Department that a matter before it involves a question of fact requiring special expertise, the Department may direct that in dealing with that matter it shall have the assistance of one or more experts.

(3) In this Article—

“the current legislation” means the Contributions and Benefits Act, the Jobseekers Order<sup>F29</sup>, the Recovery of Benefits Order and the State Pension Credit Act (Northern Ireland) 2002];

“expert” means a person appearing to the Department to have knowledge or experience which would be relevant in determining the question of fact requiring special expertise;

“the former legislation” means the National Insurance Acts (Northern Ireland) 1966 to 1974, the National Insurance (Industrial Injuries) Acts (Northern Ireland) 1966 to 1974, the Social Security (Northern Ireland) Act 1975 and Part III of the Social Security (Northern Ireland) Order 1986.

**F26** functions transf. by 1999 c. 10

**F27** mod. by SR 1999/349, 350

**F28** prosp. in pt. certain functions transf. by 2002 c. 21

**F29** 2002 c. 14 (NI)

## Appeals

### Appeal to appeal tribunal

**13**<sup>F30</sup>.—<sup>F31F32</sup>(1<sup>F33</sup> This Article applies to any decision of the Department under Article 9 or 11 (whether as originally made or as revised under Article 10) which—

(a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2;<sup>F34</sup> or]

(b) is made otherwise than on such a claim or award, and falls within Schedule 3;<sup>F35</sup> . . .

*Sub.#para. (c) rep. by SI 1999/671*

<sup>F34</sup>(2<sup>F33</sup> In the case of a decision to which this Article applies, the claimant and such other person as may be prescribed shall have a right to an appeal tribunal, but nothing in this paragraph shall confer a right of appeal in relation to a prescribed decision, or a prescribed determination embodied in or necessary to a decision.)]

(3<sup>F33</sup> Regulations under paragraph (2) shall not prescribe any decision or determination that relates to the conditions of entitlement to a relevant benefit for which a claim has been validly made or for which no claim is required.

(4<sup>F33</sup> Where the Department has determined that any amount is recoverable under section 69 or 72 of the Administration Act, any person from whom the Department has determined that it is recoverable shall have the same right of appeal to an appeal tribunal as a claimant.

(5<sup>F33</sup> In any case where—

(a) the Department has made a decision in relation to a claim under Part V of the Contributions and Benefits Act; and

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(b) the entitlement to benefit under that Part of that Act of any person other than the claimant is or may be, under Part VI of Schedule 7 to that Act, affected by that decision, that other person shall have the same right of appeal to an appeal tribunal as the claimant.

(6<sup>F33</sup>) A person with a right of appeal under this Article shall be given such notice of a decision to which this Article applies and of that right as may be prescribed.

(7) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.

(8<sup>F33</sup>) In deciding an appeal under this Article, an appeal tribunal—

- (a)<sup>F33</sup> need not consider any issue that is not raised by the appeal; and
- (b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

(9<sup>F33</sup>) The reference in paragraph (1) to a decision under Article 11 is a reference to a decision superseding any such decision as is mentioned in sub-paragraph (a) or (b) of paragraph (1) of that Article.

**F30** mod. by SR 1999/349, 350  
**F31** temp. mod. by SI 2002/2926  
**F32** prosp. in pt. certain functions transf. by 2002 c. 21  
**F33** mod. by SI 2005/191  
**F34** SI 1999/671  
**F35** SI 1999/671

### Redetermination, etc. of appeals by tribunal

14<sup>F36</sup>.—<sup>F37F38</sup>(1) This Article applies where an application is made to a person under Article 15(10)(a) for leave to appeal from a decision of an appeal tribunal.

(2) If the person considers that the decision was erroneous in point of law, he may set aside the decision and refer the case either for redetermination by the tribunal or for determination by a differently constituted tribunal.

(3<sup>F39</sup>) If each of the principal parties to the case expresses the view that the decision was erroneous in point of law, the person shall set aside the decision and refer the case for determination by a differently constituted tribunal.

[<sup>F40</sup>(4<sup>F39</sup>) In this Article and Article 15 “the principal parties” means—

- (a) the persons mentioned in paragraph (3)(a) and (b) of that Article, and
- (b) where applicable, the person mentioned in paragraph (3)(d) and such a person as is first mentioned in paragraph (4) of that Article.]

**F36** mod. by SR 1999/349, 350  
**F37** temp. mod. by SI 2002/2926  
**F38** prosp. in pt. certain functions transf. by 2002 c. 21  
**F39** mod. by SI 2005/191  
**F40** SI 1999/671

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## Appeal from tribunal to Commissioner

**15** <sup>F41</sup>—<sup>F42F43</sup>(1 <sup>F44</sup> Subject to the provisions of this Article, an appeal lies to a Commissioner from any decision of an appeal tribunal under Article 13 or 14 on the ground that the decision of the tribunal was erroneous in point of law.

(Para)

(3) <sup>F45</sup> . . . an appeal lies under this Article at the instance of any of the following—

- (a) <sup>F44</sup> the Department;
- (b) <sup>F44</sup> the claimant and such other person as may be prescribed;
- (c) <sup>F44</sup> in any of the cases mentioned in paragraph (5), a trade union; and
- (d) <sup>F44</sup> a person from whom it is determined that any amount is recoverable under section 69 or 72 of the Administration Act.

(4) <sup>F44</sup> In a case relating to industrial injuries benefit an appeal lies under this Article at the instance of a person whose entitlement to benefit is, or may be, under Part VI of Schedule 7 to the Contributions and Benefits Act, affected by the decision appealed against, as well as at the instance of any person or body such as is mentioned in paragraph (3).

(5) <sup>F44</sup> The following are the cases in which an appeal lies at the instance of a trade union—

- (a) where the claimant is a member of the union at the time of the appeal and was so immediately before the matter in question arose;
- (b) where that matter in any way relates to a deceased person who was a member of the union at the time of his death;
- (c) where the case relates to industrial injuries benefit and the claimant or, in relation to industrial death benefit, the deceased, was a member of the union at the time of the relevant accident.

(6) <sup>F44</sup> Paragraphs <sup>F45</sup> . . . , (3) and (5), as they apply to a trade union, apply also to any other association which exists to promote the interests and welfare of its members.

<sup>F44</sup>(7) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a tribunal with directions for its determination.

(8) Where the Commissioner holds that the decision appealed against was erroneous in point of law, he shall set it aside and—

- (a) he shall have power—
  - (i) to give the decision which he considers the tribunal should have given, if he can do so without making fresh or further findings of fact; or
  - (ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; and
- (b) in any other case he shall refer the case to a tribunal with directions for its determination.

(9) Subject to any direction of the Commissioner, a reference under paragraph (7) or (8)(b) shall be to a differently constituted tribunal.

(10) No appeal lies under this Article without the leave—

- (a) of the person who constituted, or was the chairman of, the tribunal when the decision was given or, in a prescribed case, the leave of such other person as may be prescribed; or
- (b) subject to and in accordance with regulations, of a Commissioner.

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<sup>F44</sup>(11) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought and applications made for leave to appeal.

(12) The Lord Chancellor may pay to any person who attends any proceedings under this Article<sup>F46</sup> or under paragraph 8 of Schedule 7 to Child Support, Pensions and Social Security Act (Northern Ireland) 2000] such travelling and other allowances as he may determine; and in this paragraph the reference to travelling and other allowances includes a reference to compensation for loss of remunerative time.

(13) The Lord Chancellor may by regulations provide—

- (a) for officers authorised by him to make any determinations which fall to be made by Commissioners;
- (b) for the procedure to be followed by such officers in making such determinations;
- (c) for the manner in which such determinations by such officers may be called in question.

**F41** mod. by SR 1999/349, 350

**F42** temp. mod. by SI 2002/2926

**F43** prosp. in pt. certain functions transf. by 2002 c. 21

**F44** mod. by SI 2005/191

**F45** SI 1999/671

**F46** 2000 c. 4 (NI)

#### Modifications etc. (not altering text)

**C11** Art. 15 modified (1.1.2010 for certain purposes otherwise prosp.) by *Saving Gateway Accounts Act 2009* (c. 8), ss. 25(5), 31; S.I. 2009/3332, art. 2(e); S.I. 2010/921, art. 2(1) which was revoked by S.I. 2010/1640, art. 2

**C12** Art. 15(7)-(13) applied (4.12.2006 for certain purposes, 29.1.2007 for all other purposes) by *Recovery of Health Services Charges (Northern Ireland) Order 2006* (S.I. 2006/1944 (N.I. 13)), arts. 1(2), 11(3) (with art. 18); S.R. 2006/484, art. 2

**C13** Art. 15(7)-(13) applied (1.10.2008) by *Mesothelioma, etc., Act (Northern Ireland) 2008* (c. 9), ss. 6(3), 12(1); S.R. 2008/351, art. 2(2)

*Procedure, etc.*

## Procedure

**16** <sup>F47</sup>—<sup>F48F49</sup>(1) Regulations ( “procedure regulations”) may make any such provision as is specified in Schedule 4.

(2) Procedure regulations prescribing the procedure to be followed in cases before a Commissioner shall provide that any hearing shall be in public except in so far as the Commissioner for special reasons otherwise directs.

(3) It is hereby declared—

- (a) <sup>F50</sup> that the power to prescribe procedure includes power to make provision as to the representation of one person, at any hearing of a case, by another person whether having professional qualifications or not; and
- (b) <sup>F50</sup> that the power to provide for the procedure to be followed in connection with the making of decisions by the Department includes power to make provision with respect to the formulation of the matters to be decided, whether on a reference under section 111 of the Administration Act or otherwise.

<sup>F51</sup>(4) <sup>F50</sup> Paragraph (5) applies to any issue—

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- (a) as to whether a Class 1A contribution is payable, or otherwise relating to a Class 1A contribution; or
- (b) relating to emoluments in respect of which a Class 1A contribution would be payable but for section 10(8A) of the Contributions and Benefits Act,

and in that paragraph, in relation to such an issue, “the relevant person” means the person who is liable or alleged to be liable, or (as the case may be) who would be liable or who it is alleged would be liable, to pay the Class 1A contribution in question.

<sup>F51</sup>(5 <sup>F50</sup> In proceedings for the determination of an issue to which this paragraph applies, there shall be available to a witness (other than the relevant person) any privilege against self-incrimination or incrimination of a spouse which is available to a witness in legal proceedings.

(6) If it appears to a Commissioner that a matter before him involves a question of fact of special difficulty, he may direct that in dealing with that matter he shall have the assistance of one or more experts.

In this paragraph “expert” means a person appearing to the Commissioner to have knowledge or experience which would be relevant in determining the question of fact of special difficulty.

(7) If it appears to the Chief Commissioner (or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for the purpose) that—

- (a) an application for leave under Article 15(10)(b); or
- (b) an appeal,

falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the application or appeal be dealt with, not by that Commissioner alone, but by a tribunal consisting of any two or more of the Commissioners.

If the decision of such a tribunal is not unanimous, the decision of the majority shall be the decision of the tribunal; and the presiding Commissioner shall have a casting vote if the votes are equally divided.

(8) Where a direction is given under paragraph (7)(a), Article 15(10)(b) shall have effect as if the reference to a Commissioner were a reference to such a tribunal as is mentioned in paragraph (7).

(9) Except so far as it may be applied by procedure regulations, Part I of the Arbitration Act 1996 shall not apply to any proceedings under this Chapter.

- F47** mod. by SR 1999/349, 350
- F48** temp. mod. by SI 2002/2926
- F49** prosp. in pt. certain functions transf. by 2002 c. 21
- F50** mod. by SI 2005/191
- F51** prosp. rep. by SI 1999/671

## Finality of decisions

**17** <sup>F52</sup>—<sup>F53F54</sup>(1 <sup>F55</sup> Subject to the provisions of this Chapter, any decision made in accordance with the foregoing provisions of this Chapter shall be final; and subject to the provisions of any regulations under Article 12, any decision made in accordance with those regulations shall be final.

(2) If and to the extent that regulations so provide, any finding of fact or other determination embodied in or necessary to such a decision, or on which such a decision is based, shall be conclusive for the purposes of—

- (a) further such decisions;
- (b) <sup>F55</sup> decisions made under the Child Support Order; and
- (c) <sup>F55</sup> decisions made under the Vaccine Damage Payments Act.

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- F52** mod. by SR 1999/349, 350  
**F53** temp. mod. by SI 2002/2926  
**F54** prosp. in pt. certain functions transf. by 2002 c. 21  
**F55** mod. by SI 2005/191

### Matters arising as respects decisions

- 18**<sup>F56</sup>.—<sup>F57</sup>(1) Regulations may make provision as respects matters arising—
- (a) pending any decision under this Chapter of the Department, an appeal tribunal or a Commissioner which relates to—
    - (i) any claim for a relevant benefit;<sup>F58</sup> or]
    - (ii) any person's entitlement to such a benefit or its receipt;<sup>F58</sup> or]*Heads (iii), (iv) rep. by SI 1999/671*
  - (b) out of the revision under Article 10 or on appeal of any such decision.
- (2) Regulations under paragraph (1) as it applies to child benefit may include provision as to the date from which child benefit is to be payable to a person in respect of a child<sup>F59</sup> or qualifying young person] in a case where, before the benefit was awarded to that person, child benefit in respect of the child<sup>F59</sup> or qualifying young person] was awarded to another person.

- F56** mod. by SR 1999/349, 350  
**F57** prosp. in pt. certain functions transf. by 2002 c. 21  
**F58** SI 1999/671  
**F59** Words in art. 18(2) inserted (24.3.2005 for certain purposes, otherwise 10.4.2006) by Child Benefit Act 2005 (c. 6), ss. 2(3), 6, Sch. 1 para. 52

### Medical examinations

#### Medical examination required by the Department

- 19**<sup>F60</sup>.—<sup>F61F62</sup>(1) Before making a decision on a claim for a relevant benefit, or as to a person's entitlement to such a benefit<sup>F63</sup> . . . , the Department may refer the person—
- (a) in respect of whom the claim is made; or
  - (b) whose entitlement is at issue,
- to a medical practitioner for such examination and report as appears to the Department to be necessary for the purpose of providing it with information for use in making the decision.
- (2) Paragraph (3) applies where—
- (a) the Department has exercised the power conferred on it by paragraph (1); and
  - (b) the medical practitioner requests the person referred to him to attend for or submit himself to medical examination.
- (3) If the person fails without good cause to comply with the request, the Department shall make the decision against him.

- F60** mod. by SR 1999/349, 350  
**F61** mod. by SR 1999/246  
**F62** prosp. in pt. certain functions transf. by 2002 c. 21

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**F63** SI 1999/671

### Medical examination required by appeal tribunal

**20** <sup>F64</sup>.—<sup>F65</sup>(1) This Article applies where an appeal has been brought under Article 13 against a decision on a claim for a relevant benefit, or as to a person's entitlement to such a benefit<sup>F66</sup>. . . .

(2) An eligible person may, if prescribed conditions are satisfied, refer the person—

- (a) in respect of whom the claim is made; or
- (b) whose entitlement is at issue,

to a medical practitioner for such examination and report as appears to the eligible person to be necessary for the purpose of providing an appeal tribunal with information for use in determining the appeal.

In this paragraph “eligible person” means a person who is eligible to be appointed as the sole member of an appeal tribunal, or to be nominated as the chairman of such a tribunal.

(3) At a hearing before an appeal tribunal, except in prescribed cases or circumstances, the tribunal—

- (a) may not carry out a physical examination of the person mentioned in paragraph (2); and
- (b) may not require that person to undergo any physical test for the purpose of determining whether he satisfies the condition mentioned in section 73(1)(a) of the Contributions and Benefits Act.

**F64** mod. by SR 1999/349, 350

**F65** prosp. in pt. certain functions transf. by 2002 c. 21

**F66** SI 1999/671

### *Suspension and termination of benefit*

#### Suspension in prescribed circumstances

**21** <sup>F67</sup>.—<sup>F68</sup>(1) Regulations may provide for—

- (a) suspending payments of a relevant benefit, in whole or in part, in prescribed circumstances;
- (b) the subsequent making in prescribed circumstances of any or all of the payments so suspended.

(2) Regulations made under paragraph (1) may, in particular, make provision for any case where—

- (a) it appears to the Department that an issue arises whether the conditions for entitlement to a relevant benefit are or were fulfilled;
- (b) it appears to the Department that an issue arises whether a decision as to an award of a relevant benefit should be revised (under Article 10) or superseded (under Article 11);
- (c) an appeal is pending against a decision of an appeal tribunal, a Commissioner or a court; or
- (d) an appeal is pending against the decision given in a different case by a Commissioner or a court, and it appears to the Department that if the appeal were to be determined in a particular way an issue would arise whether the award of a relevant benefit (whether the same benefit or not) in the case itself ought to be revised or superseded.

(3) For the purposes of paragraph (2), an appeal against a decision is pending if—

- (a) an appeal against the decision has been brought but not determined;

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- (b) an application for leave to appeal against the decision has been made but not determined; or
- (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.

(Para)

**F67** mod. by SR 1999/349, 350  
**F68** prosp. in pt. certain functions transf. by 2002 c. 21

### **Suspension and termination for failure to furnish information, etc.**

**22** <sup>F69</sup>.—<sup>F70</sup>(1) The powers conferred by this Article are exercisable in relation to persons who fail to comply with information requirements.

(2) Regulations may provide for—

- (a) suspending payments of a relevant benefit, in whole or in part;
- (b) the subsequent making in prescribed circumstances of any or all of the payments so suspended.

(3) In this Article and Article 23 “information requirement” means a requirement, made in pursuance of regulations under subsection (1)(hh) of section 5 of the Administration Act, to furnish information or evidence needed for a determination whether a decision on an award of benefit to which that section applies should be revised under Article 10 or superseded under Article 11.

[<sup>F71</sup>(4) Subsection (2A) of section 5 of the Administration Act shall apply in relation to paragraph (3) as it applies in relation to paragraph (hh) of subsection (1) of that section.]

**F69** mod. by SR 1999/349, 350  
**F70** prosp. in pt. certain functions transf. by 2002 c. 21  
**F71** 2002 c. 14 (NI)

### **Termination in cases of failure to furnish information**

**23** <sup>F72</sup>. <sup>F73</sup>Regulations may provide that, except in prescribed cases or circumstances, a person—

- (a) whose benefit has been suspended in accordance with regulations under Article 21 and who subsequently fails to comply with an information requirement; or
- (b) whose benefit has been suspended in accordance with regulations under Article 22 for failing to comply with such a requirement,

shall cease to be entitled to the benefit from a date not earlier than the date on which payments were suspended.

**F72** mod. by SR 1999/349, 350  
**F73** prosp. in pt. certain functions transf. by 2002 c. 21

### **Suspension and termination for failure to submit to medical examination**

**24** <sup>F74</sup>. <sup>F75</sup>Regulations may make provision—

- (a) enabling the Department to require a person to whom a relevant benefit has been awarded to submit to medical examination;

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(b) for suspending payments of benefit, in whole or in part, in a case of a person who fails to submit himself to a medical examination to which he is required to submit in accordance with regulations under paragraph (a);

(c) for the subsequent making in prescribed circumstances of any or all of the payments so suspended;

(d) for entitlement to the benefit to cease, except in prescribed cases or circumstances, from a date not earlier than the date on which payments were suspended.

**F74** mod. by SR 1999/349, 350

**F75** prosp. in pt. certain functions transf. by 2002 c. 21

*[<sup>F76</sup>Appeals dependent on issues falling to be decided by Inland Revenue]*

**F76** SI 1999/671

### **Appeals dependent on issues falling to be decided by Inland Revenue**

**24A**<sup>F77</sup>.—(1) Regulations may make provision for an appeal tribunal or Commissioner, where on any appeal there arises any issue which under Article 7 of the Social Security Contributions (Transfer of functions, etc.) (Northern Ireland) Order 1999 falls to be decided by the Inland Revenue.

(2) Regulations under this Article may #

- (a) provide for the appeal to be referred to the Department pending the decision by an officer of the Inland Revenue,
- (b) enable or require the Department, in specified circumstances, to deal with any other issue arising on the appeal pending the decision on the referred issue, and
- (c) enable the Department, on receiving the decision of an officer of the Inland Revenue, or any determination of the tax appeal Commissioners made on an appeal from his decision#
  - (i) to revise his decision
  - (ii) to make a decision superseding his decision, or
  - (iii) to refer the appeal to the appeal tribunal or Commissioner to determination

**F77** prosp. in pt. certain functions transf. by 2002 c. 21

*Decisions and appeals dependent on other cases*

### **Decisions involving issues that arise on appeal in other cases**

**25**<sup>F78</sup>.—<sup>F79</sup>(1) This Article applies where—

- (a) a decision by the Department falls to be made under Article 9, 10 or 11 in relation to a particular case; and
- (b) an appeal is pending against the decision given in another case by a Commissioner or a court (whether or not the two cases concern the same benefit).

(2) In a case relating to a relevant benefit, the Department need not make the decision while the appeal is pending if it considers it possible that the result of the appeal will be such that, if it were already determined, there would be no entitlement to benefit.

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(3) If the Department considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some other way—

- (a) the Department need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
- (b) the Department may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.

(4) Where the Department acts in accordance with paragraph (3)(b), following the determination of the appeal it shall, if appropriate, revise its decision (under Article 10) in accordance with that determination.

(5) For the purposes of this Article, an appeal against a decision is pending if—

- (a) an appeal against the decision has been brought but not determined;
- (b) an application for leave to appeal against the decision has been made but not determined; or
- (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.

(6) In sub-paragraphs (a), (b) and (c) of paragraph (5), any reference to an appeal, or to an application for leave to appeal, against a decision includes a reference to an application for, or for leave to apply for, judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978.

**F78** mod. by SR 1999/349, 350

**F79** prosp. in pt. certain functions transf. by 2002 c. 21

### Appeals involving issues that arise on appeal in other cases

**26**<sup>F80</sup>.—<sup>F81</sup>(1) This Article applies where—

- (a) an appeal ( “appeal A”) in relation to a decision under Article 9, 10 or 11 is made to an appeal tribunal, or from an appeal tribunal to a Commissioner; and
- (b) an appeal ( “appeal B”) is pending against a decision given in a different case by a Commissioner or a court (whether or not the two appeals concern the same benefit).

(2) If the Department considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, the Department may serve notice requiring the tribunal or Commissioner—

- (a) not to determine appeal A but to refer it to the Department; or
- (b) to deal with the appeal in accordance with paragraph (4).

(3) Where appeal A is referred to the Department under paragraph (2)(a), following the determination of appeal B and in accordance with that determination, the Department shall if appropriate—

- (a) in a case where appeal A has not been determined by the tribunal, revise (under Article 10) its decision which gave rise to that appeal; or
- (b) in a case where appeal A has been determined by the tribunal, make a decision (under Article 11) superseding the tribunal's decision.

(4) Where appeal A is to be dealt with in accordance with this paragraph, the appeal tribunal or Commissioner shall either—

- (a) stay appeal A until appeal B is determined; or

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- (b) if the tribunal or Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—
  - (i) appeal B had already been determined; and
  - (ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.

In this paragraph “the appellant” means the person who appealed or, as the case may be, first appealed against the decision mentioned in paragraph (1)(a).

(5) Where the appeal tribunal or Commissioner acts in accordance with paragraph (4)(b), following the determination of appeal B the Department shall, if appropriate, make a decision (under Article 11) superseding the decision of the tribunal or Commissioner in accordance with that determination.

- (6) For the purposes of this Article, an appeal against a decision is pending if—
  - (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.
- (7) In this Article—
  - (a) the reference in paragraph (1)(a) to an appeal to a Commissioner includes a reference to an application for leave to appeal to a Commissioner; and
  - (b) any reference in sub-paragraph (a), (b) or (c) of paragraph (6) to an appeal, or to an application for leave to appeal, against a decision includes a reference to an application for, or for leave to apply for, judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978.
- (8) Regulations may make provision supplementing that made by this Article.

**F80** mod. by SR 1999/349, 350

**F81** prosp. in pt. certain functions transf. by 2002 c. 21

### *Cases of error*

#### **Restrictions on entitlement to benefit in certain cases of error**

- 27<sup>F82</sup>.—<sup>F83</sup>(1) Subject to paragraph (2), this Article applies where—
- (a) the effect of the determination, whenever made, of an appeal to a Commissioner or the court ( “the relevant determination”) is that the adjudicating authority's decision out of which the appeal arose was erroneous in point of law; and
  - (b) after the date of the relevant determination a decision falls to be made by the Department in accordance with that determination (or would, apart from this Article, fall to be so made)—
    - (i) in relation to a claim for benefit;
    - (ii) as to whether to revise, under Article 10, a decision as to a person's entitlement to benefit; or
    - (iii) on an application made under Article 11 for a decision as to a person's entitlement to benefit to be superseded.
- (2) This Article does not apply where the decision of the Department mentioned in paragraph (1) (b)—

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- (a) is one which, but for Article 25(2) or (3)(a), would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of Article 26(3) or (5).
- (3) In so far as the decision relates to a person's entitlement to a benefit in respect of—
- (a) a period before the date of the relevant determination; or
  - (b) in the case of a widow's payment, a death occurring before that date,

it shall be made as if the adjudicating authority's decision had been found by the Commissioner or court not to have been erroneous in point of law.

(4) In deciding whether a person is entitled to benefit in a case where his entitlement depends on his having been entitled to the same or some other benefit before attaining a particular age, paragraph (3) shall be disregarded for the purpose only of deciding whether he was so entitled before attaining that age.

- (5) Paragraph (1)(a) shall be read as including a case where—
- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
  - (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (6) It is immaterial for the purposes of paragraph (1)—
- (a) where such a decision as is mentioned in sub-paragraph (b)(i) falls to be made, whether the claim was made before or after the date of the relevant determination;
  - (b) where such a decision as is mentioned in sub-paragraph (b)(ii) or (iii) falls to be made on an application under Article 10 or (as the case may be) Article 11, whether the application was made before or after that date.

(7) In this Article—

“adjudicating authority” means—

- (a) the Department;
- (b) any former officer, tribunal or body; or
- (c) any officer, tribunal or body in Great Britain corresponding to a former officer, tribunal or body;

“benefit” means—

- (a) benefit under Parts II to V of the Contributions and Benefits Act, other than Old Cases payments;
- (b) benefit under Part II of the Social Security (Northern Ireland) Act 1975 (in respect of a period before 1st July 1992 but not before 6th April 1975);
- (c) benefit under the National Insurance Act (Northern Ireland) 1946 or 1966, or the National Insurance (Industrial Injuries) Act (Northern Ireland) 1946 or 1966 (in respect of a period before 6th April 1975);
- (d) a jobseeker's allowance;
- (dd) [<sup>F84</sup>state pension credit;]
- (e) any benefit corresponding to a benefit mentioned in [<sup>F85</sup> paragraphs (a) to (dd)]; and
- (f) any income-related benefit;

“the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in England and Wales, the <sup>F86</sup> House of Lords or the Court of Justice of the European Community;

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“former officer, tribunal or body” means any of the following, that is to say—

- (a) an adjudication officer or, in the case of a decision given on a reference under section 19(2) or 23(1) of the Administration Act, a social security appeal tribunal, a disability appeal tribunal or a medical appeal tribunal;
- (b) an adjudicating medical practitioner appointed under section 47 of that Act or a specially qualified adjudicating medical practitioner appointed in accordance with regulations under section 60(2) of that Act; or
- (c) the National Assistance Board for Northern Ireland, the Supplementary Benefits Commission for Northern Ireland, the Attendance Allowance Board for Northern Ireland, a benefit officer, an insurance officer or a supplement officer.

(8) For the purposes of this Article, any reference to entitlement to benefit includes a reference to entitlement—

- (a) to any increase in the rate of a benefit; or
- (b) to a benefit, or increase of benefit, at a particular rate.

(9) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this Article in accordance with any regulations made for that purpose.

(10) Regulations made under paragraph (9) may include provision—

- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Commissioner; or
- (b) for a determination of a lower court or a Commissioner to be treated as if it had been made on the date of a determination of a higher court.

**F82** mod. by SR 1999/349, 350

**F83** prosp. in pt. certain functions transf. by 2002 c. 21

**F84** 2002 c. 14 (NI)

**F85** 2002 c. 14 (NI)

**F86** prosp. subst. by 2005 c. 4

### Correction of errors and setting aside of decisions

**28** <sup>F87</sup>—<sup>F88F89</sup>(1) Regulations may make provision with respect to—

- (a) the correction of accidental errors in any decision or record of a decision made under any relevant statutory provision; and
- (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
  - (i) 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 a party's representative or was not received at an appropriate time by the person who gave the decision; or
  - (ii) a party to the proceedings or a party's representative was not present at a hearing related to the proceedings.

[<sup>F90</sup>(1A <sup>F91</sup> In paragraph (1) “decision” does not include any decision made by an officer of the Inland Revenue, other than a decision under or by virtue of Part III of the Pension Schemes (Northern Ireland) Act 1993.]

(2) Nothing in paragraph (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that paragraph.

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- (3)<sup>F91</sup> In this Article “relevant statutory provision” means any statutory provision contained in—
- (a) this Chapter;
  - (b) the Contributions and Benefits Act;
  - (c) the Pension Schemes (Northern Ireland) Act 1993;
  - (d) the Jobseekers Order;<sup>F92</sup> . . .
  - (e) the Recovery of Benefits Order<sup>F93</sup>; or]
  - <sup>F93</sup>(f) the State Pension Credit Act (Northern Ireland) 2002.]

**F87** mod. by SR 1999/349, 350  
**F88** temp. mod. by SI 2002/2926  
**F89** prosp. in pt. certain functions transf. by 2002 c. 21  
**F90** SI 1999/671  
**F91** mod. by SI 2005/191  
**F92** 2002 c. 14 (NI)  
**F93** 2002 c. 14 (NI)

### *Industrial accidents*

#### **Decision that accident is an industrial accident**

**29**<sup>F94</sup>.—<sup>F95</sup>(1) Where, in connection with any claim for industrial injuries benefit, it is decided that the relevant accident was or was not an industrial accident—

- (a) an express declaration of that fact shall be made and recorded; and
- (b) subject to paragraph (3), a claimant shall be entitled to have the issue whether the relevant accident was an industrial accident decided notwithstanding that his claim is disallowed on other grounds.

(2) Subject to paragraph (3) and Article 30, any person suffering personal injury by accident shall be entitled, if he claims the accident was an industrial accident—

- (a) to have that issue decided; and
- (b) to have a declaration made and recorded accordingly,

notwithstanding that no claim for benefit has been made in connection with which the issue arises; and this Chapter shall apply for that purpose as if the issue had arisen in connection with a claim for benefit.

(3) The Department, an appeal tribunal or a Commissioner (as the case may be) may refuse to decide the issue whether an accident was an industrial accident if satisfied that it is unlikely to be necessary to decide the issue for the purposes of any claim for benefit; and this Chapter shall apply as if any such refusal were a decision on the issue.

(4) Subject to Articles 10 to 15 and to section 22 of the Administration Act, any declaration under this Article that an accident was or was not an industrial accident shall be conclusive for the purposes of any claim for industrial injuries benefit in respect of that accident.

(5) Where paragraph (4) applies—

- (a) in relation to a death occurring before 11th April 1988; or
- (b) for the purposes of section 60(2) of the Contributions and Benefits Act,

it shall have effect as if at the end there were added the words “whether or not the claimant is the person at whose instance the declaration was made”.

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(6) For the purposes of this Article (but subject to Article 30), an accident whereby a person suffers personal injury shall be deemed, in relation to him, to be an industrial accident if—

- (a) it arises out of and in the course of his employment;
- (b) that employment is employed earner's employment for the purposes of Part V of the Contributions and Benefits Act; and
- (c) payment of benefit is not under section 94(5) of that Act precluded because the accident happened while he was outside Northern Ireland.

(7) A decision under this Article shall be final except that Articles 10 and 11 apply to a decision under this Article that an accident was or was not an industrial accident as they apply to a decision under Article 9 if, but only if, the Department is satisfied that the decision under this Article was given in consequence of any wilful non-disclosure or misrepresentation of a material fact.

**F94** mod. by SR 1999/349, 350

**F95** prosp. in pt. certain functions transf. by 2002 c. 21

### Effect of decision

**30** <sup>F96</sup>.—<sup>F97</sup>(1) A decision (given under paragraph (2) of Article 29 or otherwise) that an accident was an industrial accident is to be taken as determining only that sub-paragraphs (a), (b) and (c) of paragraph (6) of that Article are satisfied in relation to the accident.

(2) Subject to paragraphs (3) and (4), no such decision is to be taken as importing a decision as to the origin of any injury or disability suffered by the claimant, whether or not there is an event identifiable as an accident apart from any injury that may have been received.

(3) A decision that, on a particular occasion when there was no event so identifiable, a person had an industrial accident by reason of an injury shall be treated as a decision that, if the injury was suffered by accident on that occasion, the accident was an industrial accident.

(4) A decision that an accident was an industrial accident may be given, and a declaration to that effect be made and recorded in accordance with Article 29, without its having been found that personal injury resulted from the accident.

(5) Paragraph (4) has effect subject to the discretion under Article 29(3) to refuse to decide the issue if it is unlikely to be necessary for the purposes of a claim for benefit.

**F96** mod. by SR 1999/349, 350

**F97** prosp. in pt. certain functions transf. by 2002 c. 21

### *Other special cases*

### Incapacity for work

**31** <sup>F98</sup>.—<sup>F99</sup>(1) Regulations may provide that a determination that a person is disqualified for any period in accordance with regulations under section 167E of the Contributions and Benefits Act shall have effect for such purposes as may be prescribed as a determination that he is to be treated as capable of work for that period, and vice versa.

(2) Provision may be made by regulations for matters of such descriptions as may be prescribed to be determined by the Department, notwithstanding that other matters fall to be determined by another authority.

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(3) Nothing in this Article shall be taken to prejudice the generality of the power conferred by Article 17(2).

**F98** mod. by SR 1999/349, 350  
**F99** prosp. in pt. certain functions transf. by 2002 c. 21

### Industrial diseases

**32** <sup>F100</sup>. <sup>F101</sup> Regulations shall provide for applying the provisions of this Chapter, subject to any prescribed additions or modifications, in relation to decisions made or falling to be made under sections 108 to 110 of the Contributions and Benefits Act.

**F100** mod. by SR 1999/349, 350  
**F101** prosp. in pt. certain functions transf. by 2002 c. 21

### Christmas bonus

**33** <sup>F102</sup>. <sup>F103</sup>(1) A decision by the Department that a person is entitled or not entitled to payment of a qualifying benefit in respect of a period which includes a day in the relevant week shall be conclusive for the purposes of section 144 of the Contributions and Benefits Act.

(2) In this Article, expressions to which a meaning is assigned by section 146 of that Act have that meaning.

**F102** mod. by SR 1999/349, 350  
**F103** prosp. in pt. certain functions transf. by 2002 c. 21

### *Housing benefit*

#### Determination of claims and reviews

**34** <sup>F104</sup>. <sup>F105</sup>(1) Regulations shall require a person who has claimed housing benefit to be notified of the determination of the claim.

(2) Any such notification shall be given in such form as may be prescribed.

(3) Where claims for housing benefit are made by, or in respect of, persons who have been entitled to a jobseeker's allowance<sup>F106</sup>, income support or state pension credit], regulations may require priority to be given, in prescribed circumstances, to those claims over other claims for housing benefit.

*Para. (4) rep. with saving by 2000 c. 4 (NI)*

*Para. (5) rep. with saving by 2000 c. 4 (NI)*

**F104** mod. by SR 1999/349, 350  
**F105** prosp. in pt. certain functions transf. by 2002 c. 21  
**F106** 2002 c. 14 (NI)

*Art. 35 rep. by 2000 c. 4 (NI)*

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## Social fund payments

### Appropriate officers

**36** <sup>F107</sup>.—<sup>F108</sup>(1) In this Article and Article 38, “appropriate officer” means an officer of the Department who, acting under its authority, is exercising functions of the Department in relation to payments from the social fund such as are mentioned in section 134(1)(b) of the Contributions and Benefits Act.

(2) The Department may nominate for an area an appropriate officer who shall issue general guidance to other such officers in the area about such matters relating to the social fund as the Department may specify.

(3) In relation to any decision of an appropriate officer, Article 38 shall apply in substitution for Articles 10 and 11.

**F107** mod. by SR 1999/349, 350

**F108** prosp. in pt. certain functions transf. by 2002 c. 21

### The social fund Commissioner and inspectors

**37** <sup>F109</sup>.—<sup>F110</sup>(1) There shall continue to be an officer known as “the social fund Commissioner”.

(2) The social fund Commissioner shall be appointed by the Department.

(3) The social fund Commissioner—

(a) shall appoint such social fund inspectors; and

(b) may appoint such officers and staff for himself and for social fund inspectors,

as he thinks fit, but with the consent of the Department as to numbers.

(4) Appointments under paragraph (3) shall be made from persons made available to the social fund Commissioner by the Department.

(5) It shall be the duty of the social fund Commissioner—

(a) to monitor the quality of decisions of social fund inspectors and give them such advice and assistance as he thinks fit to improve the standard of their decisions;

(b) to arrange such training of social fund inspectors as he considers appropriate; and

(c) to carry out such other functions in connection with the work of social fund inspectors as the Department may direct.

(6) The social fund Commissioner shall report annually in writing to the Department on the standards of reviews by social fund inspectors and the Department shall publish his report.

**F109** mod. by SR 1999/349, 350

**F110** prosp. in pt. certain functions transf. by 2002 c. 21

### Reviews of determinations

**38** <sup>F111</sup>.—<sup>F112</sup>(1) An appropriate officer—

(a) shall review a social fund determination, if an application for a review is made, within such time and in such form and manner as may be prescribed, by or on behalf of the person who applied for the payment to which the determination relates;

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- (b) may review such a determination on the ground that the person who applied for the payment to which the determination relates misrepresented, or failed to disclose, any material fact; and
  - (c) may review such a determination in such other circumstances as he thinks fit.
- (2) The power to review a social fund determination conferred by paragraph (1) includes power to review a determination made on a previous review.
- (3) A social fund determination which has been reviewed under paragraph (1) shall be further reviewed by a social fund inspector if an application is made, within such time and in such form and manner as may be prescribed, by or on behalf of the person who applied for the payment to which the determination relates.
- (4) On a review under paragraph (3) a social fund inspector shall have the following powers—
- (a) power to confirm the determination made by the appropriate officer;
  - (b) power to make any determination which an appropriate officer could have made;
  - (c) power to refer the matter to such an officer for determination.
- (5) A social fund inspector may review a determination under paragraph (3) made by himself or some other social fund inspector.
- (6) In making a determination on a review an appropriate officer or a social fund inspector need not consider—
- (a) in the case of a determination on a review under paragraph (1)(a), any issue that is not raised by the application;
  - (b) in the case of a determination on a review under paragraph (1)(b), any issue that is not raised by the material fact;
  - (c) in the case of a determination on a review under paragraph (1)(c), any issue that did not cause him to carry out the review.
- (7) In making a determination on a review under paragraph (1)(a) or (c) an appropriate officer or a social fund inspector shall—
- (a) subject to sub-paragraphs (b) and (c), have regard to whichever of the following are applicable, namely—
    - (i) all the circumstances of the case and, in particular, the criteria specified in paragraphs (a) to (e) of subsection (1) of section 136 of the Contributions and Benefits Act;
    - (ii) the criteria mentioned in paragraphs (a) and (b) of subsection (1A) of that section; and
    - (iii) the criterion specified in directions issued by the Department under that subsection and the criteria mentioned in paragraph (b) of that subsection;
  - (b) act in accordance with any general directions issued by the Department under subsection (2) of that section, and any general directions issued by it with regard to reviews; and
  - (c) take account of any general guidance issued by the Department under that subsection or with regard to reviews.
- (8) In making a determination on a review under paragraph (1)(b) an appropriate officer or a social fund inspector shall—
- (a) act in accordance with any general directions issued by the Department; and
  - (b) take account of any general guidance issued by the Department.

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(9) Any reference in paragraph (6), (7) or (8) to a determination on a review under a particular provision of paragraph (1) shall be construed, in relation to a social fund inspector, as a reference to a determination on a further review of a determination which has been reviewed under that provision.

(10) Directions under this Article may specify—

- (a) the circumstances in which a social fund determination is to be reviewed; and
- (b) the manner in which a review is to be conducted.

(11) In making a determination on a review under paragraph (1)(a) or (c) an appropriate officer shall take account (subject to any directions or guidance issued by the Department under this Article) of any guidance issued by the appropriate officer nominated for his area under Article 36(2).

(12) A social fund inspector reviewing a social fund determination which has been reviewed under paragraph (1)(a) or (c) shall be under the same duties in relation to such guidance as the appropriate officer or social fund inspector who made the determination.

(13) In this Article “social fund determination” means a determination made under the Contributions and Benefits Act by an appropriate officer.

**F111** mod. by SR 1999/349, 350

**F112** prosp. in pt. certain functions transf. by [2002 c. 21](#)

### *Supplemental*

#### **Interpretation, etc. of Chapter II**

**39**<sup>F113</sup>.—<sup>F114F115</sup>(1<sup>F116</sup> In this Chapter—

“appeal tribunal” means an appeal tribunal constituted under Chapter I;

[<sup>F117</sup>“claimant”, in relation to a joint#claim couple claiming a joint#claim jobseeker's allowance (within the meaning of Jobseekers Order), means the couple or either member of the couple;]

[<sup>F118</sup>“Inland Revenue” means the Commissioners of Inland Revenue;]

“relevant benefit” has the meaning given by Article 9(3).

[<sup>F118</sup>“tax appeal Commissioners” means the Commissioners for the general purposes of the income tax appointed under section 2 of the Taxes Management Act 1970 or the Commissioners for the special purposes of the Income Tax Acts appointed under section 4 of that Act.]

(2)<sup>F116</sup> Expressions used in this Chapter to which a meaning is assigned by section 167(1) of the Administration Act have that meaning in this Chapter.

(3)<sup>F116</sup> Part II of the Administration Act (except sections 22 and 50 of that Act), which is superseded by the foregoing provisions of this Chapter, shall cease to have effect.

(4) References in any statutory provision to this Chapter include (where appropriate) references to section 22 of the Administration Act.

**F113** mod. by SR 1999/349, 350

**F114** temp. mod. by SI 2002/2926

**F115** prosp. in pt. certain functions transf. by [2002 c. 21](#)

**F116** mod. by SI 2005/191

**F117** [1999 NI 11](#)

**F118** SI 1999/671

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## CHAPTER III

### CHILD SUPPORT DECISIONS AND APPEALS

#### **Child support: revision of decisions**

**40.** For Article 18 of the Child Support Order there shall be substituted the following Article—

##### **“Revision of decisions**

**18.—**(1) Any decision of the Department under Article 13, 14 or 19 may be revised by the Department—

- (a) either within the prescribed period or in prescribed cases or circumstances; and
- (b) either on an application made for the purpose or on the Department's own initiative,

and regulations may prescribe the procedure by which a decision of the Department may be so revised.

(2) In making a decision under paragraph (1), the Department need not consider any issue that is not raised by the application or, as the case may be, did not cause the Department to act on its own initiative.

(3) Subject to paragraphs (4) and (5) and Article 28ZC, a revision under this Article shall take effect as from the date on which the original decision took (or was to take) effect.

(4) Regulations may provide that, in prescribed cases or circumstances, a revision under this Article shall take effect as from such other date as may be prescribed.

(5) Where a decision is revised under this Article, for the purpose of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.

(6) Except in prescribed circumstances, an appeal against a decision of the Department shall lapse if the decision is revised under this Article before the appeal is determined.”

#### **Child support: decisions superseding earlier decisions**

**41.** For Articles 19 to 21 of the Child Support Order there shall be substituted the following Article—

##### **“Decisions superseding earlier decisions**

**19.—**(1) Subject to paragraph (2), the following, namely—

- (a) any decision of the Department under Article 13 or 14 or this Article, whether as originally made or as revised under Article 18;
- (b) any decision of an appeal tribunal under Article 22; and
- (c) any decision of a Child Support Commissioner on an appeal from such a decision as is mentioned in sub-paragraph (b),

may be superseded by a decision made by the Department, either on an application made for the purpose or on the Department's own initiative.

(2) In making a decision under paragraph (1), the Department need not consider any issue that is not raised by the application or, as the case may be, did not cause the Department to act on its own initiative.

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(3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this Article.

(4) Subject to paragraph (5) and Article 28ZC, a decision under this Article shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.

(5) Regulations may provide that, in prescribed cases or circumstances, a decision under this Article shall take effect as from such other date as may be prescribed.”.

## **Child support: appeals to appeal tribunals**

### **42**

[<sup>F119</sup>For Articles 22 to 23 of the Child Support Order there shall be substituted the following Article—

#### **“Appeals to appeal tribunals**

**22.**—(1) Where an application for a maintenance assessment is refused, the person who made that application shall have a right of appeal to an appeal tribunal against the refusal.

(2) Where a maintenance assessment is in force, the absent parent or person with care with respect to whom it was made shall have a right of appeal to an appeal tribunal against the amount of the assessment or the date from which the assessment takes effect.

(3) Where a maintenance assessment is cancelled, or an application for the cancellation of a maintenance assessment is refused, the absent parent or person with care with respect to whom the maintenance assessment in question was, or remains, in force, shall have a right of appeal to an appeal tribunal against the cancellation or refusal.

(4) A person with a right of appeal under this Article shall be given such notice of that right and, in the case of a right conferred by paragraph (1) or (3), such notice of the decision as may be prescribed.

(5) Regulations may make—

- (a) provision as to the manner in which, and the time within which, appeals are to be brought; and
- (b) such provision with respect to proceedings before appeal tribunals as the Department considers appropriate.

(6) The regulations may in particular make any provision of a kind mentioned in Schedule 4 to the Social Security (Northern Ireland) Order 1998.

(7) In deciding an appeal under this Article, an appeal tribunal—

- (a) need not consider any issue that is not raised by the appeal; and
- (b) shall not take into account any circumstances not obtaining at the time when the decision or assessment appealed against was made.”].

**F119** Art. 42 repealed (3.3.2003 for certain purposes, otherwise prosp.) by [Child Support, Pensions and Social Security Act \(Northern Ireland\) 2000](#) (c. 4), ss. 67, 68(2), [Sch. 9 Pt. I](#); S.R. 2003/53, art. 3(1), [Sch.](#)

## **Child support: decisions and appeals dependent on other cases**

**43.** After Article 28 of the Child Support Order there shall be inserted the following Articles—

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*“Decisions and appeals dependent on other cases*

**Decisions involving issues that arise on appeal in other cases**

**28ZA.**—(1) This Article applies where—

- (a) a decision by the Department falls to be made under Article 13, 14, 18 or 19 in relation to a maintenance assessment; and
- (b) an appeal is pending against a decision given in relation to a different maintenance assessment by a Child Support Commissioner or a court.

(2) If the Department considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some way—

- (a) the Department need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
- (b) the Department may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.

(3) Where the Department acts in accordance with paragraph (2)(b), following the determination of the appeal it shall, if appropriate, revise its decision (under Article 18) in accordance with that determination.

(4) For the purposes of this Article, an appeal against a decision is pending if—

- (a) an appeal against the decision has been brought but not determined;
- (b) an application for leave to appeal against the decision has been made but not determined; or
- (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.

(5) In sub-paragraphs (a), (b) and (c) of paragraph (4), any reference to an appeal, or to an application for leave to appeal, against a decision includes a reference to an application for, or for leave to apply for, judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978.

**Appeals involving issues that arise on appeal in other cases**

**28ZB.**—(1) This Article applies where—

- (a) an appeal ( “appeal A”) in relation to a decision falling within Article 22(1) or (3), or an assessment falling within Article 22(2), is made to an appeal tribunal, or from an appeal tribunal to a Child Support Commissioner; and
- (b) an appeal ( “appeal B”) is pending against a decision given in a different case by a Child Support Commissioner or a court.

(2) If the Department considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, the Department may serve notice requiring the tribunal or Child Support Commissioner—

- (a) not to determine appeal A but to refer it to the Department; or
- (b) to deal with the appeal in accordance with paragraph (4).

(3) Where appeal A is referred to the Department under paragraph (2)(a), following the determination of appeal B and in accordance with that determination, the Department shall if appropriate—

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- (a) in a case where appeal A has not been determined by the tribunal, revise (under Article 18) its decision which gave rise to that appeal; or
  - (b) in a case where appeal A has been determined by the tribunal, make a decision (under Article 19) superseding the tribunal's decision.
- (4) Where appeal A is to be dealt with in accordance with this paragraph, the appeal tribunal or Child Support Commissioner shall either—
- (a) stay appeal A until appeal B is determined; or
  - (b) if the tribunal or Child Support Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—
    - (i) appeal B had already been determined; and
    - (ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.

In this paragraph “the appellant” means the person who appealed or, as the case may be, first appealed against the decision or assessment mentioned in paragraph (1)(a).

(5) Where the appeal tribunal or Child Support Commissioner acts in accordance with paragraph (4)(b), following the determination of appeal B the Department shall, if appropriate, make a decision (under Article 19) superseding the decision of the tribunal or Child Support Commissioner in accordance with that determination.

- (6) For the purposes of this Article, an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.
- (7) In this Article—
- (a) the reference in paragraph (1)(a) to an appeal to a Child Support Commissioner includes a reference to an application for leave to appeal to a Child Support Commissioner; and
  - (b) any reference in sub-paragraph (a), (b) or (c) of paragraph (6) to an appeal, or to an application for leave to appeal, against a decision includes a reference to an application for, or for leave to apply for, judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978.
- (8) Regulations may make provision supplementing that made by this Article.”.

### **Child support: cases of error**

**44.** After Article 28ZB of the Child Support Order there shall be inserted the following Articles—

#### *“Cases of error*

### **Restrictions on liability in certain cases of error**

**28ZC.**—(1) Subject to paragraph (2), this Article applies where—

- (a) the effect of the determination, whenever made, of an appeal to a Child Support Commissioner or the court (“the relevant determination”) is that the adjudicating

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- authority's decision out of which the appeal arose was erroneous in point of law; and
- (b) after the date of the relevant determination a decision falls to be made by the Department in accordance with that determination (or would, apart from this Article, fall to be so made)—
- (i) with respect to an application for a maintenance assessment (made after the commencement date);
  - (ii) as to whether to revise, under Article 18, a decision (made after the commencement date) with respect to such an assessment; or
  - (iii) on an application under Article 19 (made after the commencement date) for a decision with respect to such an assessment to be superseded.
- (2) This Article does not apply where the decision of the Department mentioned in paragraph (1)(b)—
- (a) is one which, but for Article 28ZA(2)(a), would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of Article 28ZB(3) or (5).
- (3) In so far as the decision relates to a person's liability in respect of a period before the date of the relevant determination, it shall be made as if the adjudicating authority's decision had been found by the Commissioner or court not to have been erroneous in point of law.
- (4) Paragraph (1)(a) shall be read as including a case where—
- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
  - (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (5) It is immaterial for the purposes of paragraph (1)—
- (a) where such a decision as is mentioned in sub-paragraph (b)(i) falls to be made; or
  - (b) where such a decision as is mentioned in sub-paragraph (b)(ii) or (iii) falls to be made on an application under Article 18 or (as the case may be) Article 19,
- whether the application was made before or after the date of the relevant determination.
- (6) In this Article—
- “adjudicating authority” means the Department or a child support officer;
- “the commencement date” means the date of the coming into operation of Article 44 of the Social Security (Northern Ireland) Order 1998;
- “the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in England and Wales, the House of Lords or the Court of Justice of the European Community.
- (7) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this Article in accordance with any regulations made for that purpose.
- (8) Regulations made under paragraph (7) may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Child Support Commissioner; or
  - (b) for a determination of a lower court or a Child Support Commissioner to be treated as if it had been made on the date of a determination of a higher court.

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### **Correction of errors and setting aside of decisions**

**28ZD.**—(1) Regulations may make provision with respect to—

- (a) the correction of accidental errors in any decision or record of a decision given under this Order; and
- (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
  - (i) 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 a party's representative or was not received at an appropriate time by the person who gave the decision; or
  - (ii) a party to the proceedings or a party's representative was not present at a hearing related to the proceedings.

(2) Nothing in paragraph (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that paragraph.”.

## **PART III**

### **CONTRIBUTIONS**

#### *Amendments of the Contributions and Benefits Act*

#### **Apportionment of payments, etc. made for more than one earner**

**45.** After subsection (2) of section 3 of the Contributions and Benefits Act ( “earnings” and “earner”) there shall be inserted the following subsection—

“(2A) Regulations made for the purposes of subsection (2) above may provide that, where a payment is made or a benefit provided to or for the benefit of two or more earners, a proportion (determined in such manner as may be prescribed) of the amount or value of the payment or benefit shall be attributed to each earner.” .

#### **Payments on account of directors' contributions**

**46.** After subsection (3) of section 3 of the Contributions and Benefits Act there shall be added the following subsections—

“(4) Subsection (5) below applies to regulations made for the purposes of subsection (2) above which make special provision with respect to the earnings periods of directors and former directors of companies.

(5) Regulations to which this subsection applies may make provision—

- (a) for enabling companies, and directors and former directors of companies, to pay on account of any earnings-related contributions that may become payable by them such amounts as would be payable by way of such contributions if the special provision had not been made; and
- (b) for requiring any payments made in accordance with the regulations to be treated, for prescribed purposes, as if they were the contributions on account of which they were made.” .

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## Payments treated as remuneration and earnings

**47.**—(1) For subsection (4) of section 4 of the Contributions and Benefits Act (payments treated as remuneration and earnings) there shall be substituted the following subsection—

“(4) For the purposes of section 3 above there shall be treated as remuneration derived from an employed earner's employment—

- (a) any gain on which the earner is chargeable to tax by virtue of section 135 (gains by directors and employees from share options) of the Income and Corporation Taxes Act 1988 (“the 1988 Act”);
- (b) any sum paid (or treated as paid) to or for the benefit of the earner which is chargeable to tax by virtue of section 313 of the 1988 Act (taxation of consideration for certain restrictive undertakings).” .

(Para) .

(3) Paragraph (1), so far as relating to a sum which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988, shall have effect in relation to any undertaking given on or after 10th July 1997.

(4) Regulations under subsection (6) of section 4 of the Contributions and Benefits Act (as added by paragraph (2))—

- (a) shall not be made before the passing of the Finance Act 1998; but
- (b) may make provision having effect in relation to acquisitions on or after 6th April 1998.

*Art. 48 rep. by 1999 c. 30*

*Art. 49 rep. by 2000 c. 19*

## Class 1B contributions

**50.** After section 10 of the Contributions and Benefits Act there shall be inserted the following section—

*“Class 1B contributions*

### **Class 1B contributions.**

**10A.**—(1) Where for any tax year a person is accountable to the Inland Revenue in respect of income tax on emoluments of his employees in accordance with a PAYE settlement agreement, a Class 1B contribution shall be payable by him for that tax year in accordance with this section.

(2) The Class 1B contribution referred to in subsection (1) above is payable in respect of—

- (a) the amount of any of the emoluments included in the PAYE settlement agreement which are chargeable emoluments; and
- (b) the total amount of income tax in respect of which the person is accountable for the tax year in accordance with the PAYE settlement agreement.

(3) The amount of the Class 1B contribution referred to in subsection (1) above shall be the Class 1B percentage of the aggregate of the amounts mentioned in paragraphs (a) and (b) of subsection (2) above.

(4) Emoluments are chargeable emoluments for the purposes of subsection (2) above if, apart from section 6(2A) or 10(8A) above, the person accountable in accordance with

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the PAYE settlement agreement would be liable or entitled to pay secondary Class 1 contributions or Class 1A contributions in respect of them.

(5) Where—

- (a) the PAYE settlement agreement was entered into after the beginning of the tax year; and
- (b) Class 1 contributions were due in respect of any emoluments before it was entered into,

those emoluments shall not be taken to be included in the PAYE settlement agreement.

(6) For the purposes of subsection (3) above the Class 1B percentage shall be 12.2 per cent., but the percentage is subject to alteration under section 129 of the Administration Act.

(7) Regulations may provide for persons to be excepted in prescribed circumstances from liability to pay Class 1B contributions.”.

### **Contributions paid in error**

**51.** After section 19 of the Contributions and Benefits Act there shall be inserted the following section—

**“Class 1, 1A or 1B contributions paid in error.**

**19A.—**(1) This section applies where—

- (a) payments by way of Class 1, Class 1A or Class 1B contributions are made in respect of earnings paid to or for the benefit of an earner (or in respect of a benefit made available to an earner) in 1998-99 or a subsequent tax year (“year 1”);
- (b) the payments are made in error, in that the employment from which the earnings are derived (or by reason of which the benefit is made available) is not employed earner's employment; and
- (c) the person making the payments has not been notified of the error by the Department before the end of the tax year following year 1 (“year 2”).

(2) After the end of year 2 the earner shall, except in such circumstances as may be prescribed, be treated for all purposes relating to—

- (a) contributions and contributory benefits; and
- (b) statutory sick pay and statutory maternity pay,

as if the earnings were derived from (or the benefit were made available by reason of) employed earner's employment.”.

### **Recovery of primary Class 1 contributions by secondary contributors**

**52.** In paragraph 3 of Schedule 1 to the Contributions and Benefits Act (supplementary provisions as to contributions)—

- (a) in sub-paragraph (3), for the words from “and notwithstanding” to “any enactment” there shall be substituted the words “and, subject to sub-paragraph (4) below but notwithstanding any other provision in any enactment”;

- (b) after that sub-paragraph there shall be added the following sub-paragraphs—

“(4) Sub-paragraph (5) below applies in a case where—

- (a) a person (“the employee”) ceases in a particular tax year (“the cessation year”) to be employed by a particular employer (“the employer”); and

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(b) the employee receives from the employer in the cessation year, after the cessation of the employment, earnings in a form other than money ( “non-monetary earnings”).

(5) If and to the extent that regulations so provide, the employer may recover from the employee in such manner as may be prescribed any primary Class 1 contributions paid or to be paid by him on the employee's behalf in respect of—

(a) the non-monetary earnings mentioned in sub-paragraph (4) above; or

(b) any non-monetary earnings received by the employee from the employer in the cessation year before the cessation of the employment,

which he was unable to recover by deduction from the employee's earnings.” .

### **Contributions returns**

**53.**—(1) In sub-paragraph (3) of paragraph 7 of Schedule 1 to the Contributions and Benefits Act—

(a) for the words “is liable to” there shall be substituted the words “has been required to pay”; and

(b) for the words “be liable to” there shall be substituted the words “be required to pay”.

(2) After that paragraph there shall be inserted the following paragraph—

“**7A.**—(1) This paragraph applies where paragraph 7 above applies; and in this paragraph “contributions return” has the same meaning as in that paragraph.

(2) Without prejudice to paragraph 7(2) above or to the powers of the Inland Revenue to penalise omissions or errors in returns, regulations may provide for the Department to impose penalties in respect of a person who, in making a contributions return, fraudulently or negligently—

(a) fails to provide any information or computation that he is required to provide; or

(b) provides any such information or computation that is incorrect.

(3) Regulations under sub-paragraph (2) above shall—

(a) prescribe the rates of penalty, or provide for how they are to be ascertained;

(b) provide for the penalty to be imposed by the Department within 6 years after the date on which the penalty is incurred;

(c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;

(d) prescribe the means by which the penalty is to be enforced; and

(e) provide for enabling the Department, in its discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.”.

### **Collection of contributions by the Department**

**54.** After paragraph 7A of Schedule 1 to the Contributions and Benefits Act there shall be inserted the following paragraph—

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*“Collection of contributions by the Department*

**7B.**—(1) Regulations may provide that, in such cases or circumstances as may be prescribed—

- (a) contributions payable under Part I of this Act shall be paid to the Department (and not to the Inland Revenue); and
- (b) the Department shall be responsible for the collection of such contributions, and generally for the relevant administration.

(2) Regulations under this paragraph may, in particular—

- (a) provide for returns to be made to the Department by such date as may be prescribed;
- (b) prescribe the form in which returns are to be made, or provide for returns to be made in such form as the Department may approve;
- (c) prescribe the manner in which contributions are to be paid, or provide for contributions to be paid in such manner as the Department may approve;
- (d) prescribe the due date for the payment of contributions;
- (e) subject to sub-paragraph (4) below, provide for interest to be charged by the Department on contributions that are not paid by the due date, and for enabling such interest to be remitted or repaid;
- (f) provide for interest to be paid on contributions that fall to be repaid;
- (g) provide for determining the date from which interest to be charged or paid pursuant to regulations under paragraph (e) or (f) above is to be calculated;
- (h) provide for penalties to be imposed in respect of a person who—
  - (i) fails to submit, within the time allowed, a return required to be made in accordance with regulations under paragraph (a) above;
  - (ii) in making such a return, fraudulently or negligently fails to provide any information or computation that he is required to provide;
  - (iii) in making such a return, fraudulently or negligently provides any incorrect information or computation; or
  - (iv) fails to pay Class 2 contributions by the due date;
- (i) provide for a penalty imposed pursuant to regulations under paragraph (h) above to carry interest from the date on which it becomes payable until payment.

(3) Where—

- (a) a decision relating to contributions falls to be made under Article 9, 10, 11, 13 or 15 of the Social Security (Northern Ireland) Order 1998 or section 22 of the Administration Act; and
- (b) the decision will affect a person's liability for, or the amount of, any interest due in respect of those contributions,

regulations under sub-paragraph (2)(e) above shall not require any such interest to be paid until the decision has been made.

(4) Regulations under sub-paragraph (2)(e) above may provide that, in such cases or circumstances as may be prescribed, interest under those regulations may be charged by the Inland Revenue (instead of the Department) as if the regulations were made by virtue of paragraph 6 above.

(5) Regulations under sub-paragraph (2)(h) above shall—

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- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
- (b) subject to sub-paragraph (6) below, provide for the penalty to be imposed by the Department—
  - (i) within 6 years after the date on which the penalty is incurred; or
  - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within 3 years after the final determination of the amount of those contributions;
- (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
- (d) prescribe the means by which the penalty is to be enforced; and
- (e) provide for enabling the Department, in its discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.

(6) Regulations under sub-paragraph (2)(h)(ii) or (iii) above may provide that, in such cases or circumstances as may be prescribed, penalties under those regulations may be imposed by the Inland Revenue (instead of the Department) as if the return in question were a contributions return within the meaning of paragraph 7 above.

(7) Section 12 above shall not apply in relation to Class 2 contributions in respect of which the Department charges interest or imposes a penalty pursuant to regulations under paragraph (e) or (h) of sub-paragraph (2) above.

(8) Interest or penalties may be charged by virtue of regulations under this paragraph in respect of a period before the coming into operation of Article 54 of the Social Security (Northern Ireland) Order 1998 but only to the extent that interest or penalties would have been chargeable if the contributions in question had been recoverable, in respect of that period, by virtue of regulations under paragraph 6 above.

(9) Any reference to contributions in sub-paragraph (1) above shall be construed as including a reference to any interest or penalty payable, in respect of contributions, by virtue of regulations under paragraph (e) or (h) of sub-paragraph (2) above.

(10) The rate of interest applicable for any purpose of this paragraph shall be—

- (a) the rate from time to time prescribed under section 178 of the Finance Act 1989 for the purpose of any enactment (whether or not extending to Northern Ireland) if prescribed by regulations made by virtue of this paragraph; or
- (b) such other rate as may be prescribed by such regulations.”.

*Art. 55 rep. by SI 1999/671*

#### *Amendments of the Administration Act*

#### **Breach of regulations**

**56.** For section 107 of the Administration Act there shall be substituted the following section—

##### **“Breach of regulations.**

**107.—(1)** Regulations and schemes under any of the legislation to which section 104 above applies may provide that any person who contravenes, or fails to comply with, any provision contained in regulations made under that legislation—

- (a) in the case of a provision relating to contributions, shall be liable to a penalty;
- (b) in any other case, shall be guilty of an offence under that legislation.

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- (2) Any regulations or scheme making such provision as is mentioned in subsection (1) (a) above shall—
  - (a) prescribe the amount or rate of penalty, or provide for how it is to be ascertained;
  - (b) provide for the penalty to be imposed by the Department—
    - (i) within 6 years after the date on which the penalty is incurred; or
    - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within 3 years after the final determination of the amount of those contributions;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Department, in its discretion, to mitigate or to remit any such penalty, or to stay or to compound any proceedings for a penalty.
- (3) A person guilty of such an offence as is mentioned in subsection (1)(b) above shall be liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale;
  - (b) in the case of an offence of continuing a contravention or failure after conviction, to a fine not exceeding £40 for each day on which it is so continued.
- (4) Any provision contained in regulations which authorises statutory sick pay or statutory maternity pay to be set off against secondary Class 1 contributions is not a provision relating to contributions for the purposes of this section.”

### **Offences and penalties relating to contributions**

57. For section 108 of the Administration Act there shall be substituted the following sections—

#### **“Offences relating to contributions.**

**108.—(1)** Any person who is knowingly concerned in the fraudulent evasion of any contributions which he or any other person is liable to pay shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or to both;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

*Art. 108A rep. by SI 1999/671”*

### **Evidence of non-payment**

58.—(1) For subsection (1) of section 112 of the Administration Act (evidence of non-payment) there shall be substituted the following subsections—

“(1) A certificate of an authorised officer that any amount by way of contributions, or by way of interest or penalty in respect of contributions, which a person is liable to pay to the Department for any period has not been paid—

- (a) to the officer; or
- (b) to the best of his knowledge and belief, to any other person to whom it might lawfully be paid,

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shall until the contrary is proved be sufficient evidence in any proceedings before any court that the sum mentioned in the certificate is unpaid and due.

(1A) Subsection (2) below applies with respect to any period during which, under regulations made by virtue of paragraph 6(1) of Schedule 1 to the Contributions and Benefits Act (deduction with PAYE), contributions fall to be paid in like manner as income tax.”.

(Para)

(3) In subsection (4) of that section, the words “for a particular contribution card or”, and the words “the card in question or”, shall cease to have effect.

(Para)

*Art. 59 rep. by 2004 c.3*

### **Liability of directors, etc. for company's contributions**

60. After section 115A of the Administration Act there shall be inserted the following sections—

#### **“Liability of directors, etc. for company's contributions.**

**115B.**—(1) This section applies to contributions which a body corporate is liable to pay, where—

- (a) the body corporate has failed to pay the contributions at or within the time prescribed for the purpose; and
- (b) the failure appears to the Department to be attributable to fraud or neglect on the part of one or more individuals who, at the time of the fraud or neglect, were officers of the body corporate ( “culpable officers”).

(2) The Department may issue and serve on any culpable officer a notice (a “personal liability notice”)—

- (a) specifying the amount of the contributions to which this section applies ( “the specified amount”);
- (b) requiring the officer to pay to the Department—
  - (i) a specified sum in respect of that amount; and
  - (ii) specified interest on that sum; and
- (c) where that sum is given by paragraph (b) of subsection (3) below, specifying the proportion applied by the Department for the purposes of that paragraph.

(3) The sum specified in the personal liability notice under subsection (2)(b)(i) above shall be—

- (a) in a case where there is, in the opinion of the Department, no other culpable officer, the whole of the specified amount; and
- (b) in any other case, such proportion of the specified amount as, in the opinion of the Department, the officer's culpability for the failure to pay that amount bears to that of all the culpable officers taken together.

(4) In assessing an officer's culpability for the purposes of subsection (3)(b) above, the Department may have regard both to the gravity of the officer's fraud or neglect and to the consequences of it.

(5) The interest specified in the personal liability notice under subsection (2)(b)(ii) above shall be at the prescribed rate and shall run from the date on which the notice is issued.

(6) An officer who is served with a personal liability notice shall be liable to pay to the Department the sum and the interest specified in the notice under subsection (2)(b) above.

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(7) Where, after the issue of one or more personal liability notices, the amount of contributions to which this section applies is reduced by a payment made by the body corporate—

- (a) the amount that each officer who has been served with such a notice is liable to pay under this section shall be reduced accordingly;
- (b) the Department shall serve on each such officer a notice to that effect; and
- (c) where the reduced liability of any such officer is less than the amount that he has already paid under this section, the difference shall be repaid to him together with interest on it at the prescribed rate.

(8) Any amount paid under a personal liability notice shall be deducted from the liability of the body corporate in respect of the specified amount.

(9) In this section—

“contributions” includes any interest or penalty in respect of contributions;

“officer”, in relation to a body corporate, means—

- (a) any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act as such; and
- (b) in a case where the affairs of the body corporate are managed by its members, any member of the body corporate exercising functions of management with respect to it or purporting to do so;

“the prescribed rate” means the rate from time to time prescribed under paragraph 6 of Schedule 1 to the Contributions and Benefits Act for the purposes of the corresponding provision of that paragraph, that is to say—

- (a) in relation to subsection (5) above, sub-paragraph (2)(a);
- (b) in relation to subsection (7) above, sub-paragraph (2)(b).

### **Appeals in relation to personal liability notices.**

**115C.**—(1) No appeal shall lie in relation to a notice except as provided by this personal liability section.

(2) An individual who is served with a personal liability notice may appeal to an appeal tribunal against the Department's decision as to the issue and content of the notice on the ground that—

- (a) the whole or part of the amount specified under subsection (2)(a) of section 115B above (or the amount so specified as reduced under subsection (7) of that section) does not represent contributions to which that section applies;
- (b) the failure to pay that amount was not attributable to any fraud or neglect on the part of the individual in question;
- (c) the individual was not an officer of the body corporate at the time of the alleged fraud or neglect; or
- (d) the opinion formed by the Department under subsection (3)(a) or (b) of that section was unreasonable.

(3) The Department shall give a copy of any notice of an appeal under this section, within 28 days of the giving of the notice, to each other individual who has been served with a personal liability notice.

(4) On an appeal under this section, the burden of proof as to any matter raised by a ground of appeal shall be on the Department.

*Status: Point in time view as at 03/04/2006. This version of this Order contains provisions that are not valid for this point in time.*

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(5) Where an appeal under this section—

- (a) is brought on the basis of evidence not considered by the Department, or on the ground mentioned in subsection (2)(d) above; and
- (b) is not allowed on some other basis or ground,

the appeal tribunal shall either dismiss the appeal or remit the case to the Department, with any recommendations it sees fit to make, for the Department to consider whether to revise its decision as to the issue and content of the personal liability notice.

(6) In this section—

“appeal tribunal” means an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998;

“officer”, in relation to a body corporate, has the same meaning as in section 115B above;

“personal liability notice” has the meaning given by subsection (2) of that section;

“revise” means revise under Article 10 of the Social Security (Northern Ireland) Order 1998.”.

### **Class 1B contributions: supplemental**

**61.**—(Para)

(2) In subsection (5) of section 142 of that Act (destination of contributions), after paragraph (c) there shall be inserted the following paragraph—

- (ca) in the case of Class 1B contributions, 0.9 per cent. of the amount estimated to be the aggregate of the emoluments and the amounts of income tax in respect of which those contributions were paid;

### **Payments of certain contributions out of the Consolidated Fund**

**62.**—(1) Subsection (4) of section 143 of the Administration Act (general financial arrangements) shall have effect, and shall be deemed always to have had effect, as if—

- (a) for the words “a secondary Class 1 contributor” there were substituted the words “any person”; and
- (b) after the words “any secondary Class 1 contributions” there were inserted the words “, or any Class 1A contributions,”.

(2) Paragraph (2) of Article 3 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (from which subsection (4) of section 143 of the Administration Act is derived) shall be deemed to have had effect with the same amendments as from the commencement of the Social Security (Contributions) (Northern Ireland) Order 1991.

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## PART IV BENEFITS

### *Amendments, etc. of the Contributions and Benefits Act*

VALID FROM 01/10/2006

#### **Daily rate of maternity allowance**

**63.** In subsection (5) of section 35 of the Contributions and Benefits Act (state maternity allowance), for paragraphs (a) and (b) there shall be substituted the words “the amount payable by way of that allowance for any day shall be taken as one seventh of the weekly rate of the allowance.”.

#### **Commencement Information**

- II** [Art. 63](#) partly in force; [art. 63](#) not in force at date of making see [art. 1\(2\)](#); [art. 63](#) in force for certain purposes at 1.10.2006 by [S.R. 2006/360](#), [art. 2](#)

#### **Rates of short-term incapacity benefit**

**64.** For subsection (4) of section 44 of the Contributions and Benefits Act (Category A retirement pension) there shall be substituted the following subsection—

“(4) The weekly rate of the basic pension shall be £64.70 except that, so far as the sum is relevant for the purpose of calculating the lower rate of short-term incapacity benefit under section 30B(3) above, it shall be £62.05.

In this subsection “the lower rate” means the rate payable for the first 196 days of entitlement in any period of incapacity for work.”.

#### **Validation of certain housing benefit determinations**

**65.—(1)** Subject to paragraphs (3) and (4), in so far as a housing benefit determination made before 18th August 1997 purported to determine that housing benefit was payable in respect of—

- (a) charges for medical care, nursing care or personal care; or
- (b) charges for general counselling or any other support services,

it shall be deemed to have been validly made if, on the assumption mentioned in paragraph (2), it would have been so made.

(2) The assumption is that, at all material times, such charges as are mentioned in paragraph (1) were eligible to be met by housing benefit where the claimant's right to occupy the dwelling was conditional on his payment of the charges.

(3) Where the effect of a review carried out on or after 18th August 1997 was to revise the amount of housing benefit payable in respect of any validated charges—

- (a) the revision shall be deemed not to have been validly made in so far as it had the effect of increasing that amount; and
- (b) housing benefit shall cease to be payable in respect of those charges as from the beginning of the period for which the first payment of the revised amount of benefit was made.

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(4) Housing benefit shall not be payable in respect of any validated charges for any period falling after—

- (a) 5th April 1998 where the rent is payable at intervals of a whole number of weeks; and
- (b) 31st March 1998 in any other case.

(5) In this Article—

“the dwelling”, in relation to a housing benefit determination, means the dwelling in respect of which the determination was made;

“housing benefit determination” means a determination under section 129 of the Contributions and Benefits Act or the corresponding provisions of the Social Security (Northern Ireland) Order 1986, or a decision on a review of such a determination;

“medical care” includes treatment or counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependence;

“personal care” includes assistance at meal-times or with personal appearance or hygiene;

“validated charges” means charges in respect of which housing benefit is payable only by virtue of paragraph (1).

#### **Discretionary payments out of the social fund**

66.—(1) For subsection (1) of section 134 of the Contributions and Benefits Act (payments out of the social fund) there shall be substituted the following subsection—

“(1) There may be made out of the social fund, in accordance with this Part of this Act—

- (a) payments of prescribed amounts, whether in respect of prescribed items or otherwise, to meet, in prescribed circumstances, maternity expenses and funeral expenses; and
- (b) payments by way of community care grant, crisis loan or budgeting loan to meet other needs in accordance with directions given or guidance issued by the Department.” .

(2) After subsection (4) of that section there shall be added the following subsection—

“(5) In this Part—

“budgeting loan” means a loan awarded in circumstances specified in directions issued by the Department for the purpose of defraying an intermittent expense;

“community care grant” means a grant awarded in circumstances so specified for the purpose of meeting a need for community care;

“crisis loan” means a loan awarded in circumstances so specified for the purpose of meeting an immediate short term need,

and any reference in this subsection to meeting a need or defraying an expense includes a reference to helping to meet the need or to defray the expense.” .

#### **Budgeting loans: criteria for making awards**

67.—(1) In subsection (1) of section 136 of the Contributions and Benefits Act (principles of determination), after the word “award” there shall be inserted the words “of a community care grant or a crisis loan”.

(2) After that subsection there shall be inserted the following subsection—

“(1A) Subject to subsection (2) below, in determining whether to make an award of a budgeting loan to the applicant, or the amount or value to be awarded, an appropriate officer shall have regard to—

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- (a) such of the applicant's personal circumstances as are of a description specified in directions issued by the Department; and
  - (b) the criteria specified in paragraphs (b) to (e) of subsection (1) above, but where the criterion mentioned in paragraph (a) above would preclude the award of such a loan, the appropriate officer shall have regard instead to such other criterion as may be specified in directions so issued.”
- (3) In subsection (4) of that section, paragraph (e) shall cease to have effect and after paragraph (a) there shall be inserted the following paragraph—
- “(aa) that in circumstances specified in the direction an application for an award of a community care grant may be treated as an application for an award of a crisis loan, and vice versa;” .

### **Power to reduce child benefit for lone parents**

**68** <sup>F120</sup>.—(1) Regulations may revoke any provision of regulations which prescribes a higher rate of child benefit in the case of a lone parent, notwithstanding anything in section 141(4) of the Contributions and Benefits Act (which precludes regulations from prescribing a rate lower than the rate it replaces).

(2) In this Article “lone parent” means a parent who—

- (a) has no spouse<sup>F121</sup> or civil partner] or is not living with his spouse<sup>F121</sup> or civil partner]; and
- (b) is not living with any other person as his spouse<sup>F121</sup> or civil partner].

<sup>F121</sup>(3) For the purpose of this Article, a parent is to be regarded as living with another person as his civil partner if, but only if, he would be regarded as living with the other person as his spouse, were they instead two people of the opposite sex.]

**F120** prosp. in pt. functions transf. by 2002 c. 21

**F121** 2004 c.33

### **Statutory sick pay not precluded by maternity allowance**

**69.** In paragraph 2(d) of Schedule 11 to the Contributions and Benefits Act (circumstances in which periods of entitlement to statutory sick pay do not arise), the words “(ii) she was entitled to a maternity allowance; or” shall cease to have effect.

### *Amendments of the Administration Act*

### **Provision of information**

**70.** In subsection (1) of section 5 of the Administration Act (regulations about claims for and payments of benefit), after paragraph (h) there shall be inserted the following paragraph—

“(hh) for requiring such person as may be prescribed in accordance with the regulations to furnish any information or evidence needed for a determination whether a decision on an award of benefit to which this section applies—

(i) should be revised under Article 10 of the Social Security (Northern Ireland) Order 1998; or

(ii) should be superseded under Article 11 of that Order;” .

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## **Overpayments out of the social fund**

71.—(1) After section 69 of the Administration Act there shall be inserted the following section—

### **“Overpayments out of the social fund.**

**69ZA.**—(1) Subject to subsection (2) below, section 69 above shall apply in relation to social fund payments to which this section applies as it applies in relation to payments made in respect of benefits to which that section applies.

(2) Section 69 above as it so applies shall have effect as if—

- (a) in paragraph (a) of subsection (5) and subsection (5A), for the words “reversed or varied on an appeal or has been revised under Article 10 or superseded under Article 11” there were substituted the words “revised on a review under Article 38”;
- (b) in paragraph (b) of subsection (5), for the words “on the appeal or under that Article” there were substituted the words “on the review”; and
- (c) subsections (7) and (10A) were omitted.

(3) This section applies to social fund payments such as are mentioned in section 134(1) (b) of the Contributions and Benefits Act.”.

(2) This Article applies where such a determination as is mentioned in section 69(1) of the Administration Act is made in relation to a social fund payment—

- (a) to which section 69ZA of that Act applies; and
- (b) which is made on or after the day on which this Article comes into operation.

## **Power to anticipate pensions up-rating order**

72. After section 135 of the Administration Act there shall be inserted the following section—

### **“Power to anticipate pensions up-rating order.**

**135A.**—(1) This section applies where a statement is made in the House of Commons by or on behalf of the Secretary of State which specifies—

- (a) the amounts by which he proposes, by an order under section 150 of the Great Britain Administration Act, to increase—
  - (i) the weekly sums that are payable by way of retirement pension; or
  - (ii) the amount of graduated retirement benefit payable for each unit of graduated contributions; and
- (b) the date on which he proposes to bring the increases into force (“the commencing date”).

(2) Where, before the commencing date and after the date on which the statement is made, an award is made of a retirement pension or a graduated retirement benefit, the award either may provide for the pension or benefit to be paid as from the commencing date at the increased rate or may be expressed in terms of the rate appropriate at the date of the award.”.

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## PART V

### MISCELLANEOUS AND SUPPLEMENTAL

#### Pilot schemes

73.—(1) Any regulations to which this paragraph applies may be made so as to have effect for a specified period not exceeding 12 months.

(2) Any regulations which, by virtue of paragraph (1), are to have effect for a limited period are referred to in this Article as “a pilot scheme”.

(3) A pilot scheme may provide that its provisions are to apply only in relation to—

- (a) one or more specified areas or localities;
- (b) one or more specified classes of person;
- (c) persons selected—
  - (i) by reference to prescribed criteria; or
  - (ii) on a sampling basis.

(4) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period.

(5) A pilot scheme (“the previous scheme”) may be replaced by a further pilot scheme making the same, or similar, provision (apart from the specified period) to that made by the previous scheme.

(6) In so far as a pilot scheme would, apart from this paragraph, have the effect of—

- (a) treating as capable of work any person who would not otherwise be so treated; or
- (b) reducing the total amount of benefit that would otherwise be payable to any person,

it shall not apply in relation to that person.

(7) Paragraph (1) applies to—

- (a) regulations made under section 167D of the Contributions and Benefits Act (incapacity for work: persons to be treated as incapable or capable of work); and
- (b) in so far as they are consequential on or supplementary to any such regulations, regulations made under any of the provisions mentioned in paragraph (8).

(8) The provisions are—

- (a) subsection (5)(a) of section 22 of the Contributions and Benefits Act (earnings factors);
- (b) section 30C of that Act (incapacity benefit: days and periods of incapacity for work);

*Sub#para. (c) rep. by 1999 NI 11*

- (d) subsection (1)(e) of section 123 of that Act (income support) and, so far as relating to income support, subsection (1) of section 131 of that Act (the applicable amount);
- (e) Part XIIIA of that Act (incapacity for work);
- (f) section 59A of the Administration Act and Article 31 (incapacity for work).

#### Regulations and orders

74.—<sup>F122</sup>(1) Subject to [<sup>F123</sup>paragraph (2)] [<sup>F124</sup>paragraphs (2) and (2A)] and Article 15(13), regulations under this Order shall be made by the Department.

(2) Regulations with respect to proceedings before the Commissioners (whether for the determination of any matter or for leave to appeal to or from the Commissioners) shall be made by the Lord Chancellor.

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<sup>F125F122</sup>(2A) Paragraph (1) has effect subject to any provision providing for regulations to be made by the Treasury or the Commissioners of Inland Revenue.

(2B) Powers of the Treasury or the Commissioners of Inland Revenue to make regulations under this Order are exercisable by statutory instrument.]

(3) Where a power under this Order to make regulations or an order is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes.

(4) Powers to make regulations for the purposes of any one provision of this Order are without prejudice to powers to make regulations for the purposes of any other provision.

(5) Without prejudice to any specific provision in this Order, a power conferred by this Order to make regulations includes power to make thereby such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations to be expedient for the purposes of those regulations.

(6) Without prejudice to any specific provision in this Order, a power conferred by any provision of this Order to make regulations includes power to provide for a person to exercise a discretion in dealing with any matter.

<sup>F122</sup>(7) Any power conferred by this Order to make regulations relating to housing benefit shall include power to make different provision for different areas.

(8) In this Article “Commissioner” has the same meaning as in section 167(1) of the Administration Act.

**F122** mod. by SI 2005/191

**F123** Words in [art. 74\(1\)](#) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\)](#), ss. 51, 61, [Sch. 4 para. 17\(1\)\(2\)](#); S.I. 2003/392, [art. 2](#) (with [art. 3](#))

**F124** Words in [art. 74\(1\)](#) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\)](#), ss. 51, 61, [Sch. 4 para. 17\(1\)\(2\)](#); S.I. 2003/392, [art. 2](#) (with [art. 3](#))

**F125** [Art. 74\(2A\)\(2B\)](#) inserted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\)](#), ss. 51, 61, [Sch. 4 para. 17\(1\)\(3\)](#); S.I. 2003/392, [art. 2](#) (with [art. 3](#))

#### **Modifications etc. (not altering text)**

**C14** [Art. 74\(3\)-\(6\)](#) applied (prosp.) by [Welfare Reform Act \(Northern Ireland\) 2010 \(c. 13\)](#), ss. [7\(3\)](#), [36\(2\)](#)

**C15** [Art. 74\(3\)-\(6\)](#) applied (prosp.) by [Welfare Reform Act \(Northern Ireland\) 2010 \(c. 13\)](#), ss. [9\(6\)](#), [36\(2\)](#)

#### **Assembly, etc. control of regulations**

75.—<sup>F126</sup>(1) [<sup>F127</sup>The regulations to which this paragraph applies] [<sup>F128</sup>Where regulations specified in paragraph (2) are made by the Department, they] shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

<sup>F129</sup>(1A) Where regulations specified in paragraph (2) fall to be made by the Treasury or the Commissioners of Inland Revenue they shall not be made unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.]

(2) [<sup>F130</sup>Paragraph (1) applies to] [<sup>F131</sup>The regulations specified in this paragraph are] regulations (whether made alone or with other regulations) under—

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(a) Article 8, 13(2), 68 or 73; or

(b) paragraph 12 of Schedule 1, paragraph 9 of Schedule 2 or paragraph 2 of Schedule 4.

<sup>F126</sup>(3) Regulations made under this Order by the Department, other than regulations [<sup>F132</sup>to which paragraph (1) applies] [<sup>F133</sup>specified in paragraph (2)], shall be subject to negative resolution.

[<sup>F134</sup>(3A) Regulations made under this Order by the Treasury or the Commissioners of Inland Revenue, other than regulations specified in paragraph (2), shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

(4) Regulations made under this Order by the Lord Chancellor shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

**F126** mod. by SI 2005/191

**F127** Words in art. 75(1) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(2); S.I. 2003/392, art. 2 (with art. 3)

**F128** Words in art. 75(1) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(2); S.I. 2003/392, art. 2 (with art. 3)

**F129** Art. 75(1A) inserted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(3); S.I. 2003/392, art. 2 (with art. 3)

**F130** Words in art. 75(2) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(4); S.I. 2003/392, art. 2 (with art. 3)

**F131** Words in art. 75(2) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(4); S.I. 2003/392, art. 2 (with art. 3)

**F132** Words in art. 75(3) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(5); S.I. 2003/392, art. 2 (with art. 3)

**F133** Words in art. 75(3) substituted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(5); S.I. 2003/392, art. 2 (with art. 3)

**F134** Art. 75(3A) inserted (26.2.2003, 1.4.2003, 7.4.2003 for certain purposes and otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 51, 61, Sch. 4 para. 18(1)(6); S.I. 2003/392, art. 2 (with art. 3)

## Reports by the Department

76.—(1) The Department shall prepare, either annually or at such times or intervals as may be prescribed, a report on the standards achieved by the Department in the making of decisions against which an appeal lies to an appeal tribunal constituted under Chapter I of Part II.

(2) A copy of every such report shall be laid before the Assembly.

## <sup>F135</sup>Transitory provisions

77. Schedule 5 (which contains transitory provisions) shall have effect.

**F135** prosp. rep. by 1998 NI 10 but rep. in force on the 29.11.99 in so far as relating to child's special allowance, income support, the social fund and recovery of benefits.

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## SCHEDULES

### SCHEDULE 1

Articles 6(3) and 8(7).

#### APPEAL TRIBUNALS: SUPPLEMENTARY PROVISIONS

##### *Tenure of office*

1.—(1) Subject to the following provisions of this paragraph, the President of appeal tribunals shall hold and vacate office in accordance with the terms of his appointment.

(2) The President shall vacate his office on the day on which he attains the age of 70, but subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).

(3) <sup>F136</sup> .....

**F136** Sch. 1 para. 1(3) repealed (3.4.2006) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 86, 87, Sch. 13; S.R. 2006/124, art. 2, Sch. paras. 9, 11(k)

##### *Remuneration, etc.*

2. The Department may pay, or make such payments towards the provision of, such remuneration, pensions or allowances to or in respect of the President as it may determine.

3. The Department may pay, or make such payments towards the provision of, such remuneration, pensions or allowances to or in respect of any person appointed under this Chapter to act as a member of an appeal tribunal, or as an expert to such a tribunal, as it may determine.

4.—(1) The Department may pay—

(a) to any person required to attend at any proceedings under Article 13 of this Order<sup>F137</sup>, Article 22 of the Child Support Order or paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000]; or

(b) to any person required under this Part (whether for the purposes of this Part or otherwise) to attend for or to submit himself to medical or other examination or treatment,

such travelling and other allowances as it may determine.

(2) In this paragraph references to travelling and other allowances include references to compensation for loss of remunerative time but such compensation shall not be paid to any person in respect of any time during which he is in receipt of remuneration under paragraph 3.

**F137** 2000 c. 4 (NI)

5.—(1) Subject to sub-paragraph (2), the Department may pay such other expenses in connection with the work of any person or tribunal appointed or constituted under any provision of this Part as it may determine.

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(2) Expenses are not payable under sub-paragraph (1) in connection with the work of a tribunal presided over by a Social Security Commissioner.

#### *Officers and staff*

6. The Department may appoint such officers and staff as it thinks fit for the President and for appeal tribunals.

#### *Functions of President*

7. The President shall ensure that appropriate steps are taken by an appeal tribunal to secure the confidentiality, in such circumstances as may be prescribed, of any prescribed material or any prescribed classes or categories of material.

8.—(1) The President shall, after the requisite consultation, arrange such training for persons appointed to the panel constituted under Article 7 as he considers appropriate.

(2) In sub-paragraph (1) “the requisite consultation” means—

- (a) except in the case of medical practitioners, consultation with the Department;
- (b) in the case of such practitioners, consultation with the Chief Medical Officer of the Department.

9. The President shall supply the Department with such reports and other information with respect to the carrying out of the functions of appeal tribunals as the Department may require.

10. Each year the President shall make to the Department a written report, based on the cases coming before appeal tribunals, on the standards achieved by the Department in the making of decisions against which an appeal lies to an appeal tribunal; and the Department shall publish the report.

#### *Clerks to appeal tribunals*

11. The Department may by regulations provide—

- (a) for clerks to be assigned to service appeal tribunals; and
- (b) for clerks so assigned to be responsible for summoning members of the panel constituted under Article 7 to serve on such tribunals.

#### *Delegation of certain functions of appeal tribunals*

12.—(1) The Department may by regulations provide—

- (a)<sup>F138</sup> for officers authorised by the Department to make any determinations which fall to be made by an appeal tribunal and which do not involve the determination of any appeal, application for leave to appeal or reference;
- (b) for the procedure to be followed by such officers in making such determinations;
- (c) for the manner in which such determinations by such officers may be called in question.

(2) A determination which would have the effect of preventing an appeal, application for leave to appeal or reference being determined by an appeal tribunal is not a determination of the appeal, application or reference for the purposes of sub-paragraph (1).

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### *Certificates*

13. A document bearing a certificate which—

- (a) is signed by a person authorised in that behalf by the Department; and
- (b) states that the document, apart from the certificate, is a record of a decision of an appeal tribunal or of an officer of the Department,

shall be conclusive evidence of the decision; and a certificate purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

## SCHEDULE 2

Article 13(1).

### DECISIONS AGAINST WHICH NO APPEAL LIES

#### *Jobseeker's allowance for persons under 18*

1. In relation to a person who has reached the age of 16 but not the age of 18, a decision—

- (a) whether Article 18 of the Jobseekers Order is to apply to him; or
- (b) whether to issue a certificate under Article 19(4) of that Order.

#### *Christmas bonus*

2. A decision whether a person is entitled to payment under section 144 of the Contributions and Benefits Act.

#### *Priority between persons entitled to <sup>F139</sup>invalid care allowance*

**F139** (Coming into operation on 21.10.02 for the purposes of exercising powers to make subordinate legislation to come into operation on or after 1.4.03 and 1.4.03 for all other purposes) subst. by SR 2002/321

3. A decision as to the exercise of the discretion under section 70(7) of the Contributions and Benefits Act.

#### *Priority between persons entitled to child benefit*

4. A decision as to the exercise of the discretion under paragraph 5 of Schedule 10 to the Contributions and Benefits Act.

#### *Persons treated as if present in Northern Ireland*

5. A decision whether to certify, in accordance with regulations made under section 64(1), 71(6), 113(1) or 119 of the Contributions and Benefits Act, that it is consistent with the proper administration of that Act to treat a person as though he were present in Northern Ireland.

#### <sup>F140</sup>*Work-focused interviews*

**F140** 1999 NI 11

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**5A.** A decision terminating or reducing the amount of a person's benefit made in consequence of any decision made under regulations under section 2A<sup>[F141</sup> or 2AA] of the Administration Act (work-focused interviews).]

**F141** 2002 c. 10 (NI)

*Alteration of rates of benefit*

**6.** A decision as to the amount of benefit to which a person is entitled, where it appears to the Department that the amount is determined by—

- (a) the rate of benefit provided for by law; or
- (b) an alteration of a kind referred to in—
  - (i) section 139(1)(b) of the Administration Act (income support);<sup>F142</sup> . . .
  - (ii) section 139A(1)(b) of that Act (jobseeker's allowance)<sup>[F143</sup>; or
  - <sup>[F143</sup>(iii) section 139B(1)(b) of that Act (state pension credit).]

**F142** 2002 c. 14 (NI)

**F143** 2002 c. 14 (NI)

*Increases in income support or income-based jobseeker's allowance due to attainment of particular ages*

**7.** A decision as to the amount of benefit to which a person is entitled, where it appears to the Department that the amount is determined by the recipient's entitlement to an increased amount of income support or income-based jobseeker's allowance in the circumstances referred to in section 140(2) or 140A(2) of the Administration Act.

*Reduction in accordance with reduced benefit [<sup>F144</sup>direction] [<sup>F145</sup>decision]*

**F144** Word in Sch. 2 para. 8 heading substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), Sch. 3 para. 33; S.R. 2003/53, art. 3(1), Sch.

**F145** Word in Sch. 2 para. 8 heading substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), Sch. 3 para. 33; S.R. 2003/53, art. 3(1), Sch.

**8.** A decision to reduce the amount of a person's benefit in accordance with a reduced benefit [<sup>F146</sup>direction] [<sup>F147</sup>decision](within the meaning of Article 43 of the Child Support Order).

**F146** Word in Sch. 2 para. 8 substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), Sch. 3 para. 33; S.R. 2003/53, art. 3(1), Sch.

**F147** Word in Sch. 2 para. 8 substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), Sch. 3 para. 33; S.R. 2003/53, art. 3(1), Sch.

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*Power to prescribe other decisions*

9. Such other decisions as may be prescribed.

SCHEDULE 3

Article 13(1).

DECISIONS AGAINST WHICH AN APPEAL LIES

PART I

BENEFIT DECISIONS

*Entitlement to benefit without a claim*

1. In such cases or circumstances as may be prescribed, a decision whether a person is entitled to a relevant benefit for which no claim is required.
2. If so, a decision as to the amount to which he is entitled.

*Payability of benefit*

3. A decision whether a relevant benefit (or a component of a relevant benefit) to which a person is entitled is not payable by reason of—
  - (a) any provision of the Contributions and Benefits Act by which the person is disqualified for receiving benefit;
  - (b) regulations made under section 72(8) of that Act (disability living allowance);
  - (c) regulations made under section 113(2) of that Act (suspension of payment),<sup>F148</sup> or
  - (d) Article 21 of the Jobseekers Order (jobseeker's allowance).<sup>F149</sup>

[<sup>F150F151</sup>, or]

[<sup>F150</sup>(f) section 6, 7 or 8 of the Social Security Fraud Act (Northern Ireland) 2001.]

**F148** Word in Sch. 3 para. 3(c) repealed (prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 67, 68(2), Sch. 9 Pt. IV

**F149** Sch. 3 para. 3(d): words "; or" added (prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 57, 68(2) and word "or" subsequently repealed (1.5.2002) by Social Security Fraud Act (Northern Ireland) 2001 (c. 17), ss. 16, 17(1), Sch.; S.R. 2002/165, art. 2(d)

**F150** 2001 c. 17 (NI)

**F151** Sch. 3 para. 3(e) added (prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 57, 68(2)

*Payments to third parties*

4. Except in such cases or circumstances as may be prescribed, a decision whether the whole or part of a benefit to which a person is entitled is, by virtue of regulations, to be paid to a person other than him.

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#### *Recovery of benefits*

5. A decision whether payment is recoverable under section 69 or 69A of the Administration Act.
6. If so, a decision as to the amount of payment recoverable.

#### *Industrial injuries benefit*

7. A decision whether an accident was an industrial accident for the purposes of industrial injuries benefit.

#### *Jobseekers' agreements*

8. A decision in relation to a jobseeker's agreement as proposed to be made under Article 11 of the Jobseekers Order, or as proposed to be varied under Article 12 of that Order.

#### *[<sup>F152</sup>State pension credit*

**F152** 2002 c. 14 (NI)

- 8A. A decision whether to specify a period as an assessed income period under section 6 of the State Pension Credit Act (Northern Ireland) 2002.
- 8B. If so, a decision as to the period to be so specified.
- 8C. A decision whether an assessed income period comes to an end by virtue of section 9(4) or (5) of that Act.
- 8D. If so, a decision as to when the assessed income period so ends.]

#### *Power to prescribe other decisions*

9. Such other decisions relating to a relevant benefit as may be prescribed.

## PART II

### CONTRIBUTIONS DECISIONS

#### *Categorisation of earners*

*Para. 10 rep. by SI 1999/671*

*Para. 11 rep. by SI 1999/671*

#### *Compulsory contributions*

*Para. 12 rep. by SI 1999/671*

*Para. 13 rep. by SI 1999/671*

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### *Voluntary contributions*

*Para. 14 rep. by SI 1999/671*

*Para. 15 rep. by SI 1999/671*

### *Responsibilities at home*

**16.** A decision whether a person was (within the meaning of regulations) precluded from regular employment by responsibilities at home.

### *Earnings and contributions credits*

**17.** A decision whether a person is entitled to be credited with earnings or contributions in accordance with regulations made under section 22(5) of the Contributions and Benefits Act.

### *Statutory sick pay*

*Para. 18 rep. by SI 1999/671*

*Para. 19 rep. by SI 1999/671*

### *Statutory maternity pay*

*Para. 20 rep by SI 1999/671*

### *Liability of directors, etc. for company's contributions*

*Para. 22 rep. by SI 1999/671*

### *Preserved rights to benefit, etc.*

*Para. 23 rep. by SI 1999/671*

### *Employment of long-term unemployed*

*Para. 24 rep. by SI 1999/671*

### *Interest and penalties*

*Para. 25 rep. by SI 1999/671*

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Para. 26 rep. by SI 1999/671

Para. 27 rep. by SI 1999/671

Para. 28 rep. by SI 1999/671

*Power to prescribe other decisions*

Para. 29 rep. by SI 1999/671

SCHEDULE 4 <sup>F153</sup>

Article 16(1).

REGULATIONS AS TO PROCEDURE: PROVISION WHICH MAY BE MADE

**F153** temp. mod. by SI 2002/2926

1. Provision prescribing the procedure to be followed in connection with—
  - (a) <sup>F154</sup> the making of decisions or determinations by the Department, an appeal tribunal or a Commissioner; and
  - (b) <sup>F154</sup> the withdrawal of claims, applications, appeals or references falling to be decided or determined by the Department, an appeal tribunal or a Commissioner.

**F154** mod. by SI 2005/191

2. Provision as to the striking out or reinstatement of proceedings.
3. Provision as to the form which is to be used for any document, the evidence which is to be required and the circumstances in which any official record or certificate is to be sufficient or conclusive evidence.
4. Provision as to the time within which, or the manner in which—
  - (a) any evidence is to be produced; or
  - (b) any application, reference or appeal is to be made.
5. Provision for summoning persons to attend and give evidence or produce documents and for authorising the administration of oaths to witnesses.
6. Provision with respect to the procedure to be followed on appeals to and in other proceedings before appeal tribunals.
7. Provision for authorising an appeal tribunal consisting of two or more members to proceed with any case, with the consent of the claimant, in the absence of any member.
8. Provision for empowering an appeal tribunal to give directions for the disposal of any purported appeal which the tribunal is satisfied that it does not have jurisdiction to entertain.
9. Provision for the non-disclosure to a person of the particulars of any medical advice or medical evidence given or submitted for the purposes of a determination.

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## F155 SCHEDULE 5

Article 77.

### TRANSITORY PROVISIONS

**F155** prosp. rep. by 1998 NI 10 but rep. in force on the 29.11.99 in so far as relating to child's special allowance, income support, the social fund and recovery of benefits.

#### *Constitution of appeal tribunals*

1. In relation to any time before the coming into operation of Article 8 so far as it relates to appeals under Article 13, section 39 of the Administration Act (constitution of social security appeal tribunals) shall have effect as if—

- (a) in subsection (1), for the words “and two other persons” there were substituted the words “sitting either alone or with one or two other persons”;
- (b) in subsection (2), for the words “The members other than the chairman” there were substituted the words “Any members other than the chairman”; and
- (c) for subsection (5) there were substituted the following subsection—
 

“(5) Where the appeal tribunal hearing a case consists of more than one member it shall, if practicable, include at least one member who is of the same sex as the claimant.”.

#### *Claims no longer subsisting after decisions made*

2. In relation to any time before the coming into operation of Article 9(2), section 19 of the Administration Act (decision of adjudication officer) shall have effect as if after subsection (6) there were added the following subsection—

- “(7) Where at any time a claim for a benefit to which section 18 above applies is decided by an adjudication officer or by a social security appeal tribunal on a reference by such an officer—
- (a) the claim shall not be regarded as subsisting after that time; and
  - (b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.”.

#### *Appeals to tribunals*

3.—(1) In relation to appeals brought after the coming into operation of Article 77 and any time before the coming into operation of Article 13(8)(b), section 20 of the Administration Act (appeal to social security appeal tribunal) shall have effect as if after subsection (7) there were added the following subsection—

“(8) In deciding an appeal under this section, a social security appeal tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.”.

(2) In relation to such appeals and any such time, section 31 of that Act (appeals following reviews) shall have effect as if after subsection (6) there were added the following subsection—

“(7) The tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.”.

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### *Appeals to Commissioners*

4.—(1) In relation to any time before the coming into operation of Article 15(7), section 21 of the Administration Act (appeal from social security appeal tribunal to Commissioner) shall have effect as if—

(a) after subsection (6) there were inserted the following subsection—

“(6A) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a tribunal with directions for its determination.

In this subsection “principal parties” means—

(a) in a case relating to statutory sick pay or statutory maternity pay, the persons mentioned in subsection (2)(a), (b) and (c) above;

(b) in any other case—

(i) the persons mentioned in subsection (3)(a) and (b) above; and

(ii) where applicable, the person mentioned in subsection (3)(d) above and such a person as is first mentioned in subsection (4) above.” ; and

(b) in subsection (8), for the words “subsection (7)(b) above” there were substituted the words “subsection (6A) or (7)(b) above”.

(2) In relation to any such time, section 32 of that Act (appeal from social security appeal tribunals or disability appeal tribunals to Commissioners and appeals from Commissioners), shall have effect as if, in subsection (4), for the words “(7) to (10) of section 21” there were substituted the words “(6A) to (10) of section 21”.

(3) In relation to any such time, section 46 of that Act (appeal etc. on question of law to Commissioner) shall have effect as if—

(a) after subsection (4) there were inserted the following subsection—

“(4A) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a medical appeal tribunal with directions for its determination.

In this subsection “principal parties” means the persons mentioned in subsection (1)(a) and (b) above and the Department.” ; and

(b) in subsection (6), for the words “subsection (5) above” there were substituted the words “subsection (4A) or (5) above”.

### *Suspension of benefit in prescribed circumstances*

5.—(1) In relation to any time before the coming into operation of Article 21(2)(d), section 5(1) of the Administration Act (regulations about claims for and payments of benefit) shall have effect as if after paragraph (o) there were inserted the following paragraph—

“(oo) for suspending payment, in whole or in part, where an appeal is pending against the decision given in a different case by a social security appeal tribunal, a Commissioner or a court, and it appears to the Department that if the appeal were to be determined in a particular way an issue would arise whether the award in the case itself ought to be revised;” .

(2) In relation to any such time, paragraph 10(2) of Schedule 1 to the Jobseekers Order (supplementary provisions) shall have effect as if for the words “5(1)(o)” there were substituted the words “5(1)(o) or (oo)”.

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*Restrictions on entitlement in certain cases of error*

6. In relation to applications under section 24(1) or 28 of the Administration Act made after the coming into operation of Article 77 and any time before the coming into operation of Article 27, section 67 of that Act (determination of questions on review following erroneous decisions) shall have effect as if after subsection (1) there were inserted the following subsection—

“(1A) Where the review under section 23(2) or 28 above was carried out on an application under section 24(1) above or (as the case may be) section 28, it is immaterial for the purposes of subsection (1) above whether the application was made before or after the date of the relevant determination.”.

*Reviews of social fund determinations*

7. In relation to any time before the coming into operation of Article 38, section 64 of the Administration Act (reviews) shall have effect as if—

(a) after paragraph (a) of subsection (1) there were inserted the following paragraph—

“(aa) may review such a determination on the ground that the person who applied for the payment to which the determination relates misrepresented, or failed to disclose, any material fact; and” ;

(b) after subsection (5) there were inserted the following subsection—

“(5A) In making a determination on a review a social fund officer or a social fund inspector need not consider—

- (a) in the case of a determination on a review under subsection (1)(a) above, any issue that is not raised by the application;
- (b) in the case of a determination on a review under subsection (1)(aa) above, any issue that is not raised by the material fact;
- (c) in the case of a determination on a review under subsection (1)(b) above, any issue that did not cause him to carry out the review.” ;

(c) for subsection (6) there were substituted the following subsection—

“(6) In determining a question on a review under subsection (1)(a) or (b) above a social fund officer or social fund inspector shall, subject to subsection (7) below, have regard to whichever of the following are applicable, namely—

- (a) all the circumstances of the case and, in particular, the criteria specified in paragraphs (a) to (e) of subsection (1) of section 136 of the Contributions and Benefits Act;
  - (b) the criteria mentioned in paragraphs (a) and (b) of subsection (1A) of that section; and
  - (c) the criterion specified in directions issued by the Department under that subsection and the criteria mentioned in paragraph (b) of that subsection.” ;
- (d) in subsection (7) of that section, after the word “review” there were inserted the words “under subsection (1)(a) or (b) above”;
- (e) after that subsection there were inserted the following subsections—

“(7A) In making a determination on a review under subsection (1)(aa) above a social fund officer or a social fund inspector shall—

- (a) act in accordance with any general directions issued by the Department; and
- (b) take account of any general guidance issued by the Department.

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(7B) Any reference in subsection (5A), (6), (7) or (7A) above to a determination on a review under a particular provision of subsection (1) above shall be construed, in relation to a social fund inspector, as a reference to a determination on a further review of a determination which has been reviewed under that provision.” ;

- (f) in subsection (9), for the words “this section”, in the first place where they occur, there were substituted the words “subsection (1)(a) or (b) above”; and
- (g) in subsection (10), after the word “determination”, in the first place where it occurs, there were inserted the words “which has been reviewed under subsection (1)(a) or (b) above”.

#### *Overpayments out of the social fund*

**8.** In relation to any time before the coming into operation of Articles 10, 11 and 38, section 69ZA of the Administration Act (overpayments out of the social fund) shall have effect as if for subsection (2) there were substituted the following subsection—

“(2) Section 69 above as it so applies shall have effect as if the following provisions were omitted, namely—

- (a) in paragraph (a) of subsection (5) and subsection (5A), the words “reversed or varied on an appeal or”;
- (b) in paragraph (b) of subsection (5), the words “appeal or”; and
- (c) subsections (7) and (10A).” .

#### *Child support: appeals to tribunals*

**9.** In relation to appeals brought after the coming into operation of Article 77 and any time before the coming into operation of Article 42, Article 22 of the Child Support Order (appeals) shall have effect as if after paragraph (4) there were added the following paragraph—

“(5) In deciding an appeal under this Article, the tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.” .

#### *Schedule 6—Amendments*

#### *Schedule 7—Repeals*

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